TEXAS REGISTER

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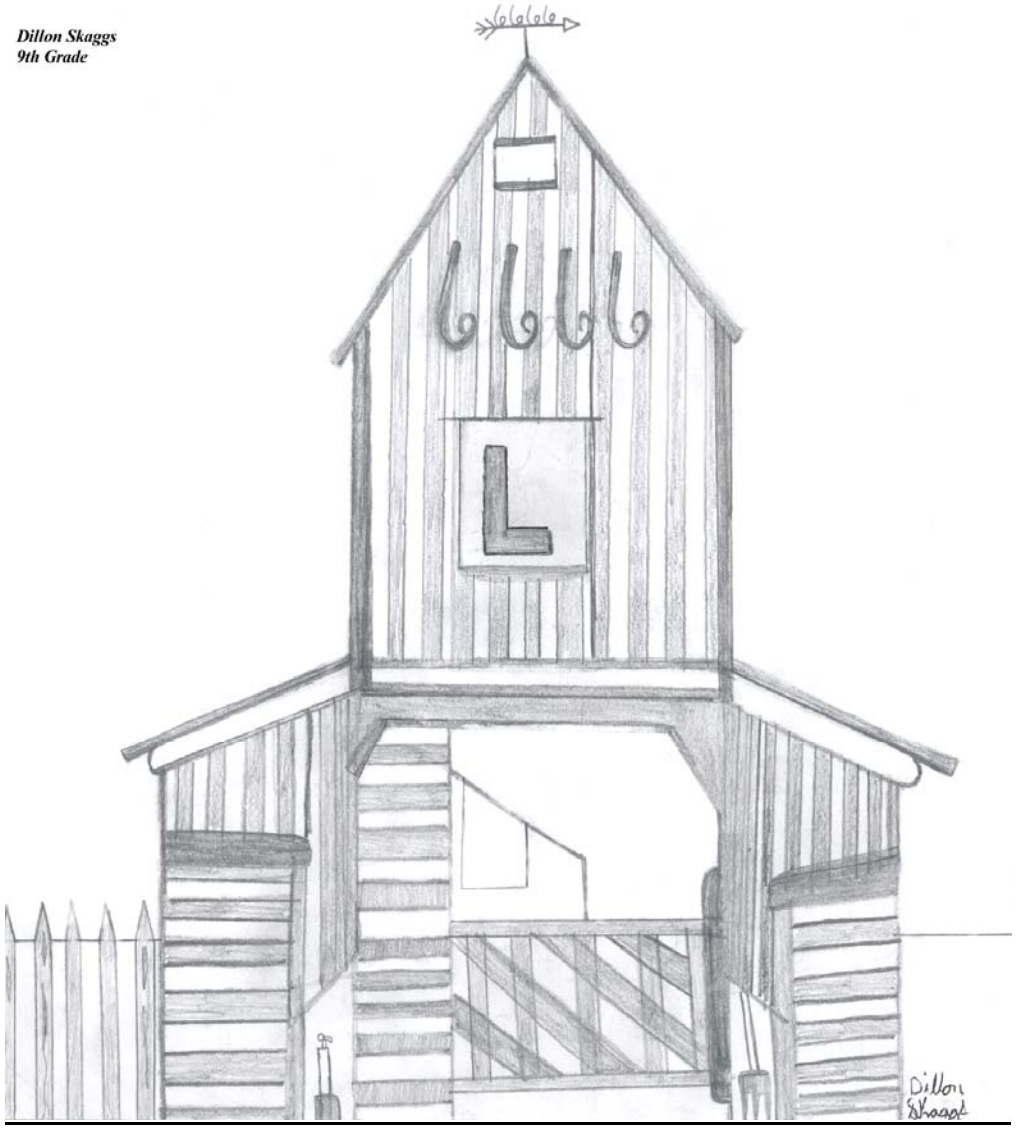

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0923-GA

Requestor:

The Honorable Edmund Kuempel

Chair, Licensing and Administrative Procedures Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Eagle Pass Independent School District is subject to a municipal ordinance that requires the district to expend funds for certain kinds of infrastructure (RQ-0923-GA)

Briefs requested by November 22, 2010

RQ-0924-GA

Requestor:

The Honorable Mike Jackson

Chair, Committee on Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Restrictions on a municipality's use of certain reserve funds originally generated from a hotel occupancy tax (RQ-0924-GA)

Briefs requested by November 23, 2010

RQ-0925-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Senate Select Committee on Veteran's Health

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Meaning of the term "enacted revenue measures" for purposes of section 17.10 of article IX of the 2010-2011 General Appropriations Act, which relates to the funding of rail relocation and improvement (RQ-0925-GA)

Briefs requested by November 29, 2010

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201006100
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: October 26, 2010

♦ ♦ ♦

Opinions

Opinion No. GA-0810

The Honorable Florence Shapiro

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Meaning of the words "bid" and "proposal" for purposes of chapter 44 of the Education Code and chapter 71 of the Natural Resources Code (RQ-0880-GA)

S U M M A R Y

An independent school district's use of the word "proposal" in the title of an invitation to participate in the competitive process to lease property for oil, gas, and mineral development does not, by itself, violate the terms of chapter 71 of the Natural Resources Code. Whether a particular political subdivision complied with that chapter in an effort to lease its mineral interests will involve a fact-intensive inquiry and construing the request, neither of which this office may do.

Opinion No. GA-0811

Mr. William Treacy

Executive Director

Texas State Board of Public Accountancy

333 Guadalupe, Tower III Suite 900

Austin, Texas 78701-3900

Re: Application of the fee exemption for certain certified public accountants who are employees of governmental entities (RQ-0881-GA)

S U M M A R Y

Because the Brazos River Authority (the "River Authority") is, in its enabling legislation, designated a municipality, we believe a court would conclude that the River Authority is a municipal government for purposes of Occupations Code subsection 901.410(1). Accordingly, an employee of the River Authority who holds a license under the Texas Public Accountancy Act and otherwise qualifies for the exemption is exempt from the professional fees imposed under Occupations Code sections 901.406 and 901.407.

Opinion No. GA-0812

Ms. Mary Ann Williamson, Chair

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

The Honorable Senfronia Thompson

Chair, Committee on Local and Consent Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether bingo gift certificates and similar items constitute "noncash merchandise prizes, toys or novelties" under section 47.01(4)(B) of the Penal Code and whether certain business practices, which may be used by charities that conduct bingo to maximize their net proceeds, comply with chapter 2001, Occupations Code, and other applicable law (RQ-0884-GA)

S U M M A R Y

Texas courts have repeatedly considered the legal status of eight-liner machines that award gift certificates redeemable at retail establishments or tickets redeemable for further play and have determined that those machines are gambling devices and do not meet the requirements for exclusion under subsection 47.01(4)(B) of the Penal Code. Similarly, a device that awards bingo cards or paper, card-minding devices and pull-tab bingo, or gift certificates redeemable for the same, is not rewarding the player exclusively with "noncash merchandise prizes, toys, or novelties," under subsection 47.01(4)(B) of the Penal Code.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201006099

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: October 26, 2010

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-492. Whether a member of the Texas Board of Professional Land Surveying may testify as an expert witness on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the board. (AOR-556)

SUMMARY

A member of the Texas Board of Professional Land Surveying should not serve as an expert witness to testify on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the board.

EAO-493. Whether a person must maintain an active campaign treasurer appointment to receive a refund of a campaign expenditure made from personal funds or to make an expenditure to obtain the refund. (AOR-557)

SUMMARY

An expenditure made by a person to obtain a refund of money previously paid by the person to a service provider in connection with the person's campaign is a campaign expenditure. The person must therefore maintain an active campaign treasurer appointment when the expenditure is made. A person is not required to maintain an active campaign treasurer appointment to receive a refund of personal funds used to make a campaign expenditure.

EAO-494. Whether communications relating to a measure election comply with section 255.003 of the Election Code. (AOR-558)

SUMMARY

For purposes of section 255.003 of the Election Code, the communications are not "political advertising" and, therefore, public funds may be used to publish the communications unless an officer or employee of the city authorizing such use of public funds knows that the communications contain false information. The communications may be viewed at http://www.ethics.state.tx.us/opinions/EAO_494_Attachment.pdf on the Texas Ethics Commission website.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201006046
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: October 22, 2010

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission proposes an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at $168 for each day during the regular session and any special session.

David A. Reisman, Executive Director, has determined that for each odd numbered year of the first five years this rule is in effect there will be a fiscal implication of $433,160 for the state and no fiscal implication for local government as a result of enforcing or administering this rule. This amount may increase if any special sessions are called.

Mr. Reisman also has determined that for each year of the first five years this rule is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

This amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. Legislative Per Diem.

[~~(a)~~] The legislative per diem is $168. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session [~~in 2009~~].

[~~(b) If necessary, this rule shall be applied retroactively to ensure payment of the $168 per diem for 2009.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006053
David A. Reisman
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 463-5800

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.3

The Texas Medical Board (Board) proposes amendments to §185.3, concerning Meetings and Committees.

The amendment provides that committee minutes are to be approved by the full board rather than by committee which is required under Robert's Rules of Order.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to provide minutes of the meetings faster to the public rather than having to wait for committee approval of the minutes at the next scheduled meeting of the Board.

Ms. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed as it affects only the Board's processes. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held on December 3, 2010.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §203.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of physician of assistants in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§185.3. Meetings and Committees.

(a) - (f) (No change.)

(g) The following are standing and permanent committees of the board. Each committee, with the exception of the Executive Committee, shall consist of at least one board member who is a licensed physician, one board member who is a licensed physician assistant, and one public board member. In the event that a committee does not have a representative of one or more of these groups, the presiding officer shall appoint additional members as necessary to maintain this composition. The Executive Committee shall include the presiding officer, secretary, and other members as named by the presiding officer. The presiding officer shall name the chair and assign the members of the other committees. The responsibilities and authority of these committees shall include those duties and powers as defined in paragraphs (1) - (3) of this subsection and such other responsibilities and authority which the board may from time to time delegate to these committees.

(1) Licensure Committee.

(A) - (E) (No change.)

(F) Oversee and make recommendations to the physician assistant board regarding any aspect of the examination process including the approval of an appropriate licensure examination and the administration of such an examination and documentation and verification of records from all applicants for licensure. [;]

(2) - (3) (No change.)

(h) - (l) (No change.)

(m) Committee minutes shall be approved by the full board with a quorum of the committee members present to vote on approval of the minutes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 20, 2010.

TRD-201006022
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 305-7016

♦ ♦ ♦

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.9

INTRODUCTION. The Texas Board of Nursing (Board) proposes amendments to §§214.2 (relating to Definitions); 214.3 (relating to Program Development, Expansion, and Closure); 214.4 (relating to Approval); 214.5 (relating to Philosophy/Mission and Objectives/Outcomes); 214.6 (relating to Administration and Organization); 214.7 (relating to Faculty); 214.8 (relating to Students); and 214.9 (relating to Program of Study). These amendments are proposed under the Occupations Code §301.157 and §301.151 and are necessary to: (i) clarify definitions within the chapter; (ii) emphasize the importance of faculty supervised, hands-on patient care in clinical practice; (iii) clarify the Board's ability to change a nursing education program's level of approval status; (iv) specify minimum qualifications for vocational nursing education program administration and faculty; (v) correct typographical errors; and (vi) eliminate redundant and contradictory language within the chapter.

Definitions.

The proposed amendments to §214.2 are necessary to clarify several of the existing definitions within the section and to add a new definition of "simulation" to the section. Recently, Board staff has received an increased number of inquiries from nursing educators across the state regarding the Board's requirements for clinical learning experiences in nursing education programs. Several of these inquiries related to the proper use of simulation in nursing education programs. In an effort to respond to these inquiries and to better address the role of simulation in clinical learning experiences, the Board has clarified the existing definition of "clinical learning experiences" in §214.2(10) and has added a new definition of "simulation" to the section.

First, the proposed amended definition of "clinical learning experiences" specifies several acceptable methods through which clinical learning experiences may occur. For example, under the proposed amended definition, a clinical learning experience may occur in an actual patient care clinical learning situation, an associated clinical conference, a nursing skills and computer laboratory, or a simulated clinical setting. The proposed amended definition also reiterates the importance of faculty supervised, hands-on patient care in clinical learning experiences and provides examples of several settings where such experiences may occur, including acute care facilities, extended care facilities, clients' residences, and community agencies. The addition of these examples is intended to better assist nursing educators and administrators in developing appropriate and meaningful clinical learning experiences for nursing students in this state.

The proposal also adds a new definition of "simulation" to §214.2. Technological advances, shortages of available clinical sites, faculty shortages, national mandates for safety, and the complexity of today's health care environment have led more and more nursing education programs to consider utilizing simulation as a viable method of providing clinical learning experiences for students. The proposed definition of "simulation" in §214.2(39) is intended to clarify the role of simulation in clinical learning experiences so that nursing educators can develop and implement simulation programs that are educationally sound and meaningful.

The proposed amendments to §214.2(27) are necessary to more closely align the definition of "MEEP" with the manner in which nursing education programs utilize this exit option. The proposed amendments clarify that this exit option is a part of a professional nursing education program and provides an opportunity for nursing students to complete their coursework and apply to take the NCLEX-PN® after they have met all the requirements needed for the examination.

Finally, the proposed amendments to §214.2(19) are necessary to correctly reference the Differentiated Essential Competencies (DEC). The Differentiated Essential Competencies (DEC) prescribe expected educational outcomes that should be demonstrated by nursing students at the time of graduation. Formerly, these competencies were referred to as the Differentiated Entry Level Competencies (DELC). Recently, however, these competencies have been reviewed and revised. The proposed amendments to §214.2(19) correctly reference the updated name of these competencies and the most recent publication title and date of these competencies.

The remaining proposed amendments to §214.2 are necessary to correct typographical errors and to re-designate the remaining paragraphs of the section appropriately.

Approval Status

Existing §214.4 sets forth the procedures and requirements that apply to a nursing education program's approval status. In order for a new nursing education program in Texas to admit students, the nursing education program must be initially approved by the Board. Once the nursing education program has demonstrated compliance with all statutory and Board requirements, and the licensing examination results from the first graduating class are evaluated by the Board, the Board may grant the nursing education program full approval status. Only a nursing education program with full approval status may initiate extension programs, grant faculty waivers, and petition for faculty waivers. A nursing education program's approval status is reviewed regularly by the Board to ensure the nursing education program's ongoing compliance with statutory and Board requirements. Some nursing education programs fail to maintain their compliance with statutory and Board requirements. When this occurs, the Board evaluates the nursing education program's deficiencies in order to determine the most appropriate corrective action. Depending upon the severity of a nursing education program's deficiencies, it may be necessary for the Board to change or withdraw a nursing education program's level of approval status.

Currently, the Board issues five levels of nursing education program approval status: initial approval, full approval, full approval with warning, conditional approval, and withdrawal of approval. The Board's procedures and requirements applicable to each level of approval status are currently set forth in §214.4(a). The Board's procedures and requirements applicable to a change in a level of approval status are currently set forth in §214.4(c). Section 214.4(b) currently sets forth the factors that may be considered by the Board when evaluating a change in the level of a nursing education program's approval status. The proposal does not substantively alter any of these procedures or requirements. Rather, the proposed amendments to §214.4 are intended to clarify the Board's existing procedures and requirements applicable to a change in the level of a nursing education program's approval status.

Specifically, proposed amended §214.4(c) reiterates that the Board may change a nursing education program's level of approval status as necessary, depending upon the nursing education program's performance and demonstrated compliance with statutory and Board requirements. Further, the proposed amendments clarify that the Board is not required to change a nursing education program's level of approval status in any particular order. Existing §214.4(a) contains a progressive listing of the levels of approval status that may be issued to a nursing education program by the Board. Further, existing §214.4(c) describes certain circumstances under which a nursing education program's level of approval status may be evaluated by the Board. However, the particular organization of these provisions within §214.4 does not limit the Board's ability to change or withdraw a nursing education program's level of approval status as necessary. Rather, the Board will consider an individual nursing education program's specific deficiencies when determining whether to change or withdraw the nursing education program's level of approval status. In some cases, this may result in a nursing education program's level of approval status changing from one progressive level to another, such as full approval to full approval with warning. In other cases, however, this may result in a nursing education program's level of approval status changing from one level to another without consideration of other levels of approval status, such as initial approval to conditional approval. In an effort to make clear that the Board is not required to change the level of a nursing education program's approval status in accordance with the progressive listing of approval status levels in §214.4(a) or §214.4(c), the proposed amendments to §214.4(c) re-organize portions of the existing text of the subsection and re-state that a change in a level of approval status is not implied or required by the description of the changes of levels of approval status in the subsection. The remaining proposed amendments are necessary to re-number the remaining paragraphs of the section appropriately.

Administration and Faculty

At its January, 2010, meeting, the Board charged the Advisory Committee on Education (Committee) with reviewing §214.6(f) and §214.7(c) and developing rule revisions as necessary. The Board's charge stemmed from the Board's review of several vocational nursing education programs in which the program's faculty and administration lacked the appropriate nursing education experience to successfully implement the program once it was approved by the Board. Although a faculty's nursing education experience is vital in creating and implementing a successful nursing educational program, the Board felt that its current rules did not clearly enough address the requisite level of experience that a nursing education program's faculty and administration must possess. As such, the Board charged the Committee with considering these concerns and recommending necessary changes, if any, to the Board's rules. The Committee convened on May 7, 2010, to consider the Board's charge. Following its discussions, the Committee voted to recommend amendments to the vocational nursing educational rules to clarify that: (i) a director or coordinator of a vocational nursing education program must have been actively employed in nursing for the past five years, preferably in administration or teaching, with a minimum of one year teaching experience in a pre-licensure nursing educational program; and (ii) each nurse faculty member must show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in the subject area of his or her teaching responsibility. At its October, 2010, meeting, the Board considered the Committee's recommenda-

tions and voted to approve the amendments to §214.6(f) and §214.7(c).

The proposed amendments to §214.6(f) and §214.7(c) are necessary to implement the recommendations of the Committee and to establish minimum credentials that a nursing education program's administration and faculty must possess. Existing §214.6(f) requires each vocational nursing education program to be administered by a qualified individual who is accountable for the planning, implementation, and evaluation of the program. Further, existing §214.6(f) prescribes several specific credentials that a vocational nursing education program's director/coordinator must possess, including being actively employed in nursing for the past five year time period. The proposed amendments to §214.6(f)(2) build upon the existing rule requirements by requiring each director/coordinator to have at least one year teaching experience in a pre-licensure nursing education program. This proposed amendment is significant because it will ensure that the director/coordinator of a vocational nursing education program will have a minimal level of teaching experience in a pre-licensure nursing education program. Because such teaching experience is invaluable when planning, implementing, and developing a nursing education program, the proposed amendments are anticipated to result in the development of stronger and healthier vocational nursing education programs. The proposed amendments to §214.7(c) serve a similar purpose. Existing §214.7(c) prescribes the qualifications that each nurse faculty member must posses. The proposed amendments to §214.7(c) add an additional requirement that each nurse faculty member be required to show evidence of his or her teaching abilities and maintain current knowledge, clinical expertise, and safety in the subject area of his or her teaching responsibility. Because nurse faculty members are so instrumental in the success of a vocational nursing education program, it is of utmost importance that each nurse faculty member be able to carry out his or her teaching responsibilities competently. This includes a faculty member's ability to successfully convey nursing skills and concepts to students and staying abreast of the most recent changes and trends in the faculty member's subject area so that the most current information is taught to students. In this way, the proposed amendments to §214.6(f) and §214.7(c) are intended to work together to ensure the most sound and meaningful education experience possible for vocational nursing students in Texas.

Remaining Amendments

The proposed amendments to §214.5 and §214.9 are necessary to correctly reference the updated name of the Differentiated Essential Competencies publication. The proposed amendments to §214.8 are necessary to eliminate redundant and contradictory language from §214.8(c) and re-designate the remaining subsections of the section accordingly.

Section-by-Section Overview. The following is a section-by-section overview of the proposal.

Proposed amended §214.2(10) defines "clinical learning experiences" as faculty planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. Further, these experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised, hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies.

Proposed amended §214.2(19) defines "Differentiated Essential Competencies (DEC)" as the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC).

Proposed amended §214.2(27) defines "MEEP" as an exit option which is a part of a professional nursing educational program designed for students to complete coursework and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

Proposed amended §214.2(39) defines "simulation" as activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

Proposed amended §214.2(40) defines "staff" as employees of the Texas Board of Nursing.

Proposed amended §214.2(41) defines "supervision" as immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

Proposed amended §214.2(42) defines "survey visit" as an on-site visit to a vocational nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§214.1 - 214.13.

Proposed amended §214.2(43) defines "systematic approach" as the organized process in nursing that provides individualized, goal-directed nursing care by performing comprehensive nursing assessments regarding the health status of the client, making nursing diagnoses that serve as the basis for the strategy of care, developing a plan of care based on the assessment and nursing diagnosis, implementing nursing care, and evaluating the client's responses to nursing interventions.

Proposed amended §214.2(44) defines "Texas Higher Education Coordinating Board (THECB)" as a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

Proposed amended §214.2(45) defines "Texas Workforce Commission (TWC)" as the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

Proposed amended §214.2(46) defines "Vocational Nursing Educational Program" as an educational unit within the structure of a school, including a college, university, or proprietary school (career school or college); and a program conducted by a hospital that provides a program of study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN® examination.

Proposed amended §214.3(b)(2) states that instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program's curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§214.1 - 214.13.

Proposed amended §214.4(a)(3) states that full or initial approval with warning is issued by the Board to a vocational nursing educational program that is not meeting legal and educational requirements.

Proposed amended §214.4(a)(4)(C) provides that, depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status from conditional approval to full approval or full approval with warning, or may withdraw approval.

Proposed amended §214.4(c)(2) provides that eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-PN® examination. When the passing score of first-time candidates who complete the vocational nursing educational program of study is less than 80% on the NCLEX-PN® examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-PN® examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

Proposed amended §214.4(c)(3) states that the progressive designation of a change in approval status is not implied by the order of the listing in §214.4(c)(3). Further, a change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under §214.4(b). Further, a warning may be issued to a program when: (i) the pass rate of first-time candidates, as described in §214.4(c)(2)(A), is less than 80% for two consecutive examination years; (ii) the program has been in serious violation of the rules and regulations; or (iii) the program has engaged in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards. Additionally, a program may be placed on conditional approval status if: (i) within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-PN® examination fails to be at least 80%; (ii) the faculty fails to implement appropriate corrective measures during the year; or (iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards. Approval may be withdrawn if:

(i) the performance of first-time candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval; (ii) the program is consistently unable to meet requirements issued by the Board; or (iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards. A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if: (i) the program's pass rate for first-time candidates during one examination year is at least 80%; and (ii) the program has met all Board requirements.

Proposed amended §214.4(c)(4) states that each vocational nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

Proposed amended §214.4(c)(5) states that the Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

Proposed amended §214.4(c)(6) states that the Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

Proposed amended §214.4(c)(7) states that the Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to: (i) meet the prescribed course of study or other standard under which it sought approval by the Board; (ii) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in §214.4(c)(8), with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board; and (iii) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

Proposed amended §214.4(c)(8) states that a school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program: (i) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and (ii) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

Proposed amended §214.4(c)(9) states that a school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

Proposed amended §214.4(c)(10) states that a school of nursing or educational program, approved by the Board as stated in §214.4(c)(8), that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent

to the Board's ongoing approval standards is subject to review by the Board.

Proposed amended §214.4(c)(11) states that the Board may assist the school or program in its effort to achieve compliance with the Board's standards.

Proposed amended §214.4(c)(12) states that a school or program from which approval has been withdrawn may reapply for approval.

Proposed amended §214.4(c)(13) states that a school of nursing or educational program accredited by an agency recognized by the Board shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports; (ii) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Proposed amended §214.5(b) provides that program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC).

Proposed amended §214.6(f) provides that the director/coordinator of each vocational nursing educational program shall have been actively employed in nursing for the past five years, preferably in administration or teaching, with a minimum of one year teaching experience in a pre-licensure nursing educational program.

Proposed amended §214.7(c)(2)(D) provides that each nurse faculty member shall show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility.

Proposed amended §214.8(c) provides that the program shall have well-defined written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented and enforced.

Proposed amended §214.8(d) states that reasons for dismissal shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to: (i) evidence of actual or potential harm to patients, clients, or the public; (ii) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency; (iii) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and (iv) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which, in the judgment of the Board, indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

Proposed amended §214.8(e) states that policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

Proposed amended §214.8(f) provides that student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the nursing educational program.

Proposed amended §214.8(g) states that acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the controlling agency/governing institution. Upon completing the receiving program's requirements, the individual is considered to be a graduate of the program.

Proposed amended §214.8(h) states that students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

Proposed amended §214.8(i) provides that students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

Proposed amended §214.9(a)(8) provides that the program of study shall include both didactic and clinical learning experiences and shall be designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC).

Proposed amended §214.9(c) states that instruction shall include, but not be limited to, organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be the adoption of clear and consistent requirements that better support the development and implementation of successful vocational nursing education programs in Texas. In addition to clarifying the requirements of the chapter, the proposed amendments are designed to ensure that the director/coordinator of a vocational nursing education program will have a minimal level of teaching experience in a pre-licensure nursing education program. This is important because teaching experience is invaluable when planning, implementing, and developing a nursing education program. As a result, the proposed amendments should promote the development of stronger and healthier vocational nursing education programs in Texas. The proposed amendments are also designed to ensure that nursing faculty can show evidence of competent and appropriate teaching abilities and that faculty maintain current knowledge, clinical expertise, and safety in the subject area of their teaching responsibility. In this way, the proposed amendments work together to ensure the most sound and meaningful education experience possible for vocational nursing students in Texas.

There are no anticipated economic costs to persons who are required to comply with the proposed amendments to §§214.2 - 214.5, 214.8, or 214.9. None of these proposed amendments

substantively alter the existing requirements of these sections or impose new or additional requirements or restrictions upon persons required to comply with the proposal. Rather, the proposed amendments clarify the existing requirements for vocational nursing programs. The Board does not anticipate altering its historical interpretation or application of these requirements, nor does it anticipate that a person's method of compliance with these requirements will be altered due to the proposed amendments.

Further, the Board does not anticipate that there will be any measurable associated costs of compliance with the proposed amendments to §214.6 and §214.7, as these amendments prescribe only minimal qualifications for vocational nursing education program administration and faculty, such as having at least one year teaching experience in a pre-licensure nursing education program and being able to demonstrate one's teaching abilities. The Board considers these requirements to be consistent with prudent hiring and staffing practices. As a result, the Board anticipates that many vocational nursing education programs will have already hired faculty and administration meeting the proposed requirements. For those vocational nursing education programs, however, that must comply with the proposed amendments, the Board does not anticipate that such compliance will result in measurable costs to the programs. The Board anticipates that vocational nursing education programs will already have budgeted adequate monies for staffing costs. The proposed amendments establish minimally acceptable standards for program faculty and administration. These minimally acceptable standards are not anticipated to result in a measurable increase in a particular vocational nursing education program's budgeted staffing costs. This is because the Board does not anticipate that the costs associated with hiring program directors/administrators or nursing faculty meeting the proposed minimum requirements to be significantly higher than hiring otherwise qualified program directors/administrators or nursing faculty.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on December 6, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Janice Hooper, PhD, RN, Lead Education Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to janice.hooper@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Occupations Code §301.157 and §301.151.

Section 301.157(a) provides that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (i) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (ii) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (iii) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under this chapter and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

Section 301.157(b) provides that the Board shall: (i) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (ii) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (iii) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (iv) approve schools of nursing and educational programs that meet the Board's requirements; (v) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (vi) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under §301.157(b)(5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.157(b-1) states that the Board may not require accreditation of the governing institution of a school of nursing. The Board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher Education Coordinating Board under provisions leading to accreditation of the institution in due course.

Section 301.157(c) states that a program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.

Section 301.157(d) states that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (i) is approved by the Board; (ii) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (iii) is approved by a state board of nursing of another state and the board, subject to §301.157(d-4).

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-2) states that a school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under Chapter 301 is subject to review by the Board. The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

Section 301.157(d-3) states that a school or program from which approval has been withdrawn under §301.157 may reapply for approval.

Section 301.157(d-4) states that the Board may recognize and accept as approved under §301.157 a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The Board shall develop policies to ensure that the other state's standards are substantially equivalent to the Board's standards.

Section 301.157(d-5) states that the Board shall streamline the process for initially approving a school of nursing or educational program under §301.157 by identifying and eliminating tasks performed by the Board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.

Section 301.157(d-6) states that the Board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must: (i) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission; (ii) require the approval process identified under §301.157(d-1) to precede the approval process conducted by the Board; and (iii) be made available on the Board's Internet website and in a written form.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

Section 301.157(d-9) states that a graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under Chapter 301 if: (i) the Board allowed graduates of the program to apply for an initial license under Chapter 301 continuously during the 10-year period preceding January 1, 2007; (ii) the program does not make any substantial changes in the length or content of its clinical competency assessment without the Board's approval; (iii) the program remains in good standing with the state board of nursing or other regulatory body in the other state; and (iv) the program participates in the research study under Section 105.008, Health and Safety Code.

Section 301.157(d-10) states that, in §301.157, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by the Health and Safety Code §105.008.

Section 301.157(d-11) states that §301.157(d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. As part of the first review conducted under §301.003 after September 1, 2009, the Sunset Advisory Commission shall: (i) recommend whether §301.157(d-8) and (d-9) should be extended; and (ii) recommend any changes to §301.157(d-8) and (d-9) relating to the eligibility for a license of graduates of a clinical competency assessment program operated in another state.

Section 301.157(e) states that the Board shall give each person, including an organization, affected by an order or decision of the Board under §301.157 reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The Board shall hear each protest or complaint from a person affected by a rule or decision regarding: (i) the inadequacy or unreasonableness of any rule or order the Board adopts; or (ii) the injustice of any order or decision of the Board.

Section 301.157(f) states that not later than the 30th day after the date an order is entered and approved by the Board, a person is entitled to bring an action against the Board in a district court of Travis County to have the rule or order vacated or modified, if that person: (i) is affected by the order or decision; (ii) is dissatisfied with any rule or order of the Board; and (iii) sets forth in a petition the principal grounds of objection to the rule or order.

Section 301.157(g) states that an appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

Section 301.157(h) states that the Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Rule: §§214.2 - 214.9 - Statute: Occupations Code §301.157 and §301.151.

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) - (9) (No change.)

(10) Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies. [~~These experiences occur in actual patient care clinical learning situations, nursing skills and computer laboratories, in simulated clinical settings, in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.~~]

(11) Clinical practice hours--hours spent in faculty-supervised, hands-on [~~actual~~] client care assignments, simulated laboratory experiences, observations, clinical conferences and clinical instruction.

(12) - (18) (No change.)

(19) Differentiated Essential Competencies (DEC)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC). [~~Differentiated Entry Level Competencies (DELC)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002* (DELC).~~]

(20) - (26) (No change.)

(27) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing educational program designed for students to complete coursework and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination. [~~MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-PN® examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements as outlined in Chapter 213 of this title (relating to Practice and Procedure).~~]

(28) - (38) (No change.)

(39) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

(40) [~~(39)~~] Staff--employees of the Texas Board of Nursing.

(41) [~~(40)~~] Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first hand the practice of students.

(42) [~~(41)~~] Survey visit--an on-site visit to a vocational nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§214.1 [~~§§214.2~~] - 214.13 of this chapter.

(43) [~~(42)~~] Systematic approach--the organized process in nursing that provides individualized, goal-directed nursing care that includes the vocational nurse's role in participating in data collection, assessment activities, planning and implementing client care, and evaluating the client's responses to nursing interventions and identification of client needs.

(44) [~~(43)~~] Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

(45) [~~(44)~~] Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

(46) [~~(45)~~] Vocational Nursing Educational Program--an educational unit within the structure of a school, including a college, university, or proprietary school (career school or college); and a program conducted by a hospital that provides a program of study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN® examination.

§214.3. Program Development, Expansion and Closure.

(a) (No change.)

(b) Extension Program/Campus.

(1) (No change.)

(2) Instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program's curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§214.1 [~~§§214.2~~] - 214.13 of this chapter (relating to Vocational Nursing Education).

(3) - (7) (No change.)

(c) - (e) (No change.)

§214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and response to the Board's recommendations. Change from one status to another is based on NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) - (2) (No change.)

(3) Full or initial approval with warning is issued by the Board to a vocational nursing educational program that is not meeting legal and educational requirements.

(A) - (B) (No change.)

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct deficiencies.

(A) - (B) (No change.)

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status from conditional approval to full approval or full approval with warning, or may withdraw approval.

(5) (No change.)

(b) (No change.)

(c) Ongoing Approval Procedures. Approval status is determined biennially by the Board on the basis of the program's compliance audit, NCLEX-PN® examination pass rate, and other pertinent data.

(1) (No change.)

(2) NCLEX-PN® Pass Rates.

(A) - (B) (No change.)

~~[(C) A warning shall be issued to the program when the pass rate of first-time candidates, as described in subsection (e)(2)(A) of this section, is less than 80% for two consecutive examination years.]~~

~~[(D) A program shall be placed on conditional approval status if, within one examination year from the date the warning is issued, the performance of first-time candidates fails to be at least 80% on the NCLEX-PN® examination, or the faculty fail to implement appropriate corrective measures.]~~

~~[(E) Approval may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program was placed on conditional approval.]~~

~~[(F) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.]~~

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:

(i) the pass rate of first-time candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two consecutive examination years;

(ii) the program has been in serious violation of the rules and regulations; or

(iii) the program has engaged in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards.

(B) A program may be placed on conditional approval status if:

(i) within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-PN® examination fails to be at least 80%;

(ii) the faculty fails to implement appropriate corrective measures during the year; or

(iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards.

(C) Approval may be withdrawn if:

(i) the performance of first-time candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval;

(ii) the program is consistently unable to meet requirements issued by the Board; or

(iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards.

(D) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if:

(i) the program's pass rate for first-time candidates during one examination year is at least 80%; and

(ii) the program has met all Board requirements.

(4) [~~(3)~~] Survey Visit. Each vocational nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, compliance audit, and NCLEX-PN® examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(5) [~~(4)~~] The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) [~~(5)~~] The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(7) [~~(6)~~] The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(A) meet the prescribed course of study or other standard under which it sought approval by the Board.

(B) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in paragraph (8) [~~(7)~~] of this subsection, with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board.

(C) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(8) [~~(7)~~] A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(B) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(9) [~~(8)~~] A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(10) [~~(9)~~] A school of nursing or educational program, approved by the Board as stated in paragraph (8) [~~(7)~~] of this subsection, that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards is subject to review by the Board.

(11) [~~(10)~~] The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(12) [~~(11)~~] A school or program from which approval has been withdrawn may reapply for approval.

(13) [~~(12)~~] A school of nursing or educational program accredited by an agency recognized by the Board shall:

(A) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(B) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(C) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) (No change.)

§214.5. Philosophy/Mission and Objectives/Outcomes.

(a) (No change.)

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC). [~~*Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002* (DELC).~~]

(c) - (e) (No change.)

§214.6. Administration and Organization.

(a) - (e) (No change.)

(f) Each vocational nursing educational program shall be administered by a qualified individual who is accountable for the planning, implementation and evaluation of the vocational nursing educational program. The director/coordinator shall:

(1) (No change.)

(2) have been actively employed in nursing for the past five years, preferably in administration or teaching, with a minimum of one year teaching experience in a prelicensure nursing educational program [~~supervision or teaching~~];

(3) - (7) (No change.)

(g) - (i) (No change.)

§214.7. Faculty.

(a) - (b) (No change.)

(c) Faculty Qualifications and Responsibilities.

(1) (No change.)

(2) Each nurse faculty member shall:

(A) (No change.)

(B) Have been actively employed in nursing for the past three years or have advanced preparation in nursing, nursing education, and/or nursing administration;[~~.~~]

(C) Have had three years varied nursing experiences since graduation; and[~~.~~]

(D) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility.

(d) - (o) (No change.)

§214.8. Students.

(a) - (b) (No change.)

[~~(c) The vocational nursing educational program shall maintain written receipt of eligibility notification for up to six months after~~

~~the enrolled individual completes the nursing educational program or permanently withdraws from the nursing educational program.~~]

(c) [~~(d)~~] The program shall have well-defined written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented and enforced.

(1) Student policies shall be in accordance with the requirements of applicable federal and state agencies.

(2) Nursing student policies which differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(3) Applicants shall present evidence of being able to meet objectives/outcomes of the program.

(4) All students shall be pretested. Tests shall measure reading comprehension and mathematical ability.

(d) [~~(e)~~] Reasons for dismissal shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to:

(1) evidence of actual or potential harm to patients, clients, or the public;

(2) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency;

(3) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and

(4) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which, in the judgment of the Board, indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(e) [~~(f)~~] Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(f) [~~(g)~~] Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the nursing educational program.

(1) The program shall maintain a signed receipt of student policies in all students' records.

(2) It is the responsibility of the program and the nursing faculty to define and enforce nursing student policies.

(g) [~~(h)~~] Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the controlling agency/governing institution. Upon completing the receiving program's requirements, the individual is considered to be a graduate of the program.

(h) [~~(i)~~] Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(i) [~~(j)~~] Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

§214.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) - (7) (No change.)

(8) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC) [~~*Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002* (DELC)~~]; and

(9) (No change.)

(b) (No change.)

(c) Instruction shall include, but not be limited to, organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, simulated laboratory instruction, and faculty-supervised, hands-on [~~actual~~] patient care clinical learning experiences.

(1) - (9) (No change.)

(d) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006064
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 305-6869

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.5, 215.8, 215.9

INTRODUCTION. The Texas Board of Nursing (Board) proposes amendments to §§215.2 (relating to Definitions); 215.3 (relating to Program Development, Expansion, and Closure); 215.4 (relating to Approval); 215.5 (relating to Philosophy/Mission and Objectives/Outcomes); 215.8 (relating to Students); and 215.9 (relating to Program of Study). These amendments are proposed under the Occupations Code §301.157 and §301.151 and are necessary to: (i) clarify definitions within the chapter; (ii) emphasize the importance of faculty supervised, hands-on patient care in clinical practice; (iii) clarify the Board's ability to change a nursing education program's level of approval status; (iv) correct typographical errors; and (v) eliminate redundant and contradictory language within the chapter.

Definitions.

The proposed amendments to §215.2 are necessary to clarify several of the existing definitions within the section and to add a new definition of "simulation" to the section. Recently, Board staff has received an increased number of inquiries from nursing educators across the state regarding the Board's requirements for clinical learning experiences in nursing education programs.

Several of these inquiries related to the proper use of simulation in nursing education programs. In an effort to respond to these inquiries and to better address the role of simulation in clinical learning experiences, the Board has clarified the existing definition of "clinical learning experiences" in §215.2(9) and has added a new definition of "simulation" to the section.

First, the proposed amended definition of "clinical learning experiences" specifies several acceptable methods through which clinical learning experiences may occur. For example, under the proposed amended definition, a clinical learning experience may occur in an actual patient care clinical learning situation, an associated clinical conference, a nursing skills and computer laboratory, or a simulated clinical setting. The proposed amended definition also reiterates the importance of faculty supervised, hands-on patient care in clinical learning experiences and provides examples of several settings where such experiences may occur, including acute care facilities, extended care facilities, clients' residences, and community agencies. The addition of these examples is intended to better assist nursing educators and administrators in developing appropriate and meaningful clinical learning experiences for nursing students in this state.

The proposal also adds a new definition of "simulation" to §215.2. Technological advances, shortages of available clinical sites, faculty shortages, national mandates for safety, and the complexity of today's health care environment have led more and more nursing education programs to consider utilizing simulation as a viable method of providing clinical learning experiences for students. The proposed definition of "simulation" in §215.2(38) is intended to clarify the role of simulation in clinical learning experiences so that nursing educators can develop and implement simulation programs that are educationally sound and meaningful.

The proposed amendments to §215.2(26) are necessary to more closely align the definition of "MEEP" with the manner in which nursing education programs utilize this exit option. The proposed amendments clarify that this exit option is a part of a professional nursing education program and provides an opportunity for nursing students to complete their coursework and apply to take the NCLEX-PN® after they have met all the requirements needed for the examination.

Finally, the proposed amendments to §215.2(19) are necessary to correctly reference the Differentiated Essential Competencies (DEC). The Differentiated Essential Competencies (DEC) prescribe expected educational outcomes that should be demonstrated by nursing students at the time of graduation. Formerly, these competencies were referred to as the Differentiated Entry Level Competencies (DELC). Recently, however, these competencies have been reviewed and revised. The proposed amendments to §215.2(19) correctly reference the updated name of these competencies and the most recent publication title and date of these competencies.

The remaining proposed amendments to §215.2 are necessary to correct typographical errors and to re-designate the remaining paragraphs of the section appropriately.

Approval Status

Existing §215.4 sets forth the procedures and requirements that apply to a nursing education program's approval status. In order for a new nursing education program in Texas to admit students, the nursing education program must be initially approved by the Board. Once the nursing education program has demonstrated compliance with all statutory and Board requirements, and the licensing examination results from the first graduating class are evaluated by the Board, the Board may grant the nursing education program full approval status. Only a nursing education program with full approval status may initiate extension programs, grant faculty waivers, and petition for faculty waivers. A nursing education program's approval status is reviewed regularly by the Board to ensure the nursing education program's ongoing compliance with statutory and Board requirements. Some nursing education programs fail to maintain their compliance with statutory and Board requirements. When this occurs, the Board evaluates the nursing education program's deficiencies in order to determine the most appropriate corrective action. Depending upon the severity of a nursing education program's deficiencies, it may be necessary for the Board to change or withdraw a nursing education program's level of approval status.

Currently, the Board issues five levels of nursing education program approval status: initial approval, full approval, full approval with warning, conditional approval, and withdrawal of approval. The Board's procedures and requirements applicable to each level of approval status are currently set forth in §215.4(a). The Board's procedures and requirements applicable to a change in a level of approval status are currently set forth in §215.4(c). Section 215.4(b) currently sets forth the factors that may be considered by the Board when evaluating a change in the level of a nursing education program's approval status. The proposal does not substantively alter any of these procedures or requirements. Rather, the proposed amendments to §215.4 are intended to clarify the Board's existing procedures and requirements applicable to a change in the level of a nursing education program's approval status.

Specifically, proposed amended §215.4(c) reiterates that the Board may change a nursing education program's level of approval status as necessary, depending upon the nursing education program's performance and demonstrated compliance with statutory and Board requirements. Further, the proposed amendments clarify that the Board is not required to change a nursing education program's level of approval status in any particular order. Existing §215.4(a) contains a progressive listing of the levels of approval status that may be issued to a nursing education program by the Board. Further, existing §215.4(c) describes certain circumstances under which a nursing education program's level of approval status may be evaluated by the Board. However, the particular organization of these provisions within §215.4 does not limit the Board's ability to change or withdraw a nursing education program's level of approval status as necessary. Rather, the Board will consider an individual nursing education program's specific deficiencies when determining whether to change or withdraw the nursing education program's level of approval status. In some cases, this may result in a nursing education program's level of approval status changing from one progressive level to another, such as full approval to full approval with warning. In other cases, however, this may result in a nursing education program's level of approval status changing from one level to another without consideration of other levels of approval status, such as initial approval to conditional approval. In an effort to make clear that the Board is not required to change the level of a nursing education program's approval status in accordance with the progressive listing of approval status levels in §215.4(a) or §215.4(c), the proposed amendments to §215.4(c) re-organize portions of the existing text of the subsection and re-state that a change in a level of approval status is not implied or required

by the description of the changes of levels of approval status in the subsection. The remaining proposed amendments are necessary to re-number the remaining paragraphs of the section appropriately.

Remaining Amendments

The proposed amendments to §215.5 and §215.9 are necessary to correctly reference the updated name of the Differentiated Essential Competencies publication. The proposed amendments to §215.8 are necessary to eliminate redundant and contradictory language from §215.8(c) and re-designate the remaining subsections of the section accordingly.

Section-by-Section Overview. The following is a section-by-section overview of the proposal.

Proposed amended §215.2(9) defines "clinical learning experiences" as faculty planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. Further, these experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised, hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies.

Proposed amended §215.2(19) defines "Differentiated Essential Competencies (DEC)" as the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC).

Proposed amended §215.2(26) defines "MEEP" as an exit option which is a part of a professional nursing educational program designed for students to complete coursework and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

Proposed amended §215.2(38) defines "simulation" as activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

Proposed amended §215.2(39) defines "staff" as employees of the Texas Board of Nursing.

Proposed amended §215.2(40) defines "supervision" as immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

Proposed amended §215.2(41) defines "survey visit" as an on-site visit to a professional nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§215.1 - 215.13.

Proposed amended §215.2(42) defines "systematic approach" as the organized process in nursing that provides individualized, goal-directed nursing care by performing comprehensive nursing assessments regarding the health status of the client, making nursing diagnoses that serve as the basis for the strategy of care, developing a plan of care based on the assessment and nursing diagnosis, implementing nursing care, and evaluating the client's responses to nursing interventions.

Proposed amended §215.2(43) defines "Texas Higher Education Coordinating Board (THECB)" as a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

Proposed amended §215.2(44) defines "Texas Workforce Commission (TWC)" as the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

Proposed amended §215.3(b)(2) states that instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program's curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§215.1 - 215.13.

Proposed amended §215.4(a)(3) states that full or initial approval with warning is issued by the Board to a professional nursing educational program that is not meeting legal and educational requirements.

Proposed amended §215.4(a)(4)(C) provides that, depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status from conditional approval to full approval or full approval with warning, or may withdraw approval.

Proposed amended §215.4(c)(2) provides that eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-RN® examination. When the passing score of first-time candidates who complete the professional nursing educational program of study is less than 80% on the NCLEX-RN® examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

Proposed amended §215.4(c)(3) states that the progressive designation of a change in approval status is not implied by the order of the listing in §215.4(c)(3). Further, a change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-RN®

examination pass rates, compliance audits, survey visits, and other factors listed under §215.4(b). Further, a warning may be issued to a program when: (i) the pass rate of first-time candidates, as described in §215.4(c)(2)(A), is less than 80% for two consecutive examination years; (ii) the program has been in serious violation of the rules and regulations; or (iii) the program has engaged in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards. Additionally, a program may be placed on conditional approval status if: (i) within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-RN® examination fails to be at least 80%; (ii) the faculty fails to implement appropriate corrective measures during the year; or (iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards. Approval may be withdrawn if:

(i) the performance of first-time candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval; (ii) the program is consistently unable to meet requirements issued by the Board; or (iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards. A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if: (i) the program's pass rate for first-time candidates during one examination year is at least 80%; and (ii) the program has met all Board requirements.

Proposed amended §215.4(c)(4) states that each professional nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

Proposed amended §215.4(c)(5) states that the Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

Proposed amended §215.4(c)(6) states that the Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

Proposed amended §215.4(c)(7) states that the Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to: (i) meet the prescribed course of study or other standard under which it sought approval by the Board; (ii) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in §215.4(c)(8), with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board; and (iii) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

Proposed amended §215.4(c)(8) states that a school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program: (i) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and (ii) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

Proposed amended §215.4(c)(9) states that a school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

Proposed amended §215.4(c)(10) states that a school of nursing or educational program, approved by the Board as stated in §215.4(c)(8), that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards is subject to review by the Board.

Proposed amended §215.4(c)(11) states that the Board may assist the school or program in its effort to achieve compliance with the Board's standards.

Proposed amended §215.4(c)(12) states that a school or program from which approval has been withdrawn may reapply for approval.

Proposed amended §215.4(c)(13) states that a school of nursing or educational program accredited by an agency recognized by the Board shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports; (ii) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Proposed amended §215.5(b) provides that program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC).

Proposed amended §215.8(c) provides that the program shall have well-defined written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented and enforced.

Proposed amended §215.8(d) states that reasons for dismissal shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to: (i) evidence of actual or potential harm to patients, clients, or the public; (ii) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency; (iii) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and (iv) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which, in the judgment of the Board, indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing

practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

Proposed amended §215.8(e) states that policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

Proposed amended §215.8(f) provides that student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the nursing educational program.

Proposed amended §215.8(g) states that acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the controlling agency/governing institution. Upon completing the receiving program's requirements, the individual is considered to be a graduate of the program.

Proposed amended §215.8(h) states that students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

Proposed amended §215.8(i) provides that students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

Proposed amended §215.9(a)(7) provides that the program of study shall include both didactic and clinical learning experiences and shall be designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC).

Proposed amended §215.9(c) states that instruction shall include, but not be limited to, organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of clear and consistent requirements, which should result in more efficient regulation. There are no anticipated economic costs to persons who are required to comply with the proposal. None of the proposed amendments substantively alter the existing requirements of §§215.2 - 215.5, 215.8, or 215.9 or impose new or additional requirements or restrictions upon persons required to comply with the proposal. Rather, the proposed amendments clarify the existing requirements for professional nursing programs. The Board does not anticipate altering its historical interpretation or application of these requirements, nor does it anticipate that a person's method of compliance with these requirements will be altered due to the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on December 6, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Janice Hooper, PhD, RN, Lead Education Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to janice.hooper@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Occupations Code §301.157 and §301.151.

Section 301.157(a) provides that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (i) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (ii) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (iii) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under this chapter and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

Section 301.157(b) provides that the Board shall: (i) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (ii) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (iii) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (iv) approve schools of nursing and educational programs that meet the Board's requirements; (v) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (vi) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under §301.157(b)(5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Section 301.157(b-1) states that the Board may not require accreditation of the governing institution of a school of nursing. The Board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher Education Coordinating Board under provisions leading to accreditation of the institution in due course.

Section 301.157(c) states that a program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.

Section 301.157(d) states that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (i) is approved by the Board; (ii) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (iii) is approved by a state board of nursing of another state and the board, subject to §301.157(d-4).

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-2) states that a school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under Chapter 301 is subject to review by the Board. The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

Section 301.157(d-3) states that a school or program from which approval has been withdrawn under §301.157 may reapply for approval.

Section 301.157(d-4) states that the Board may recognize and accept as approved under §301.157 a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The Board shall develop policies to ensure that the other state's standards are substantially equivalent to the Board's standards.

Section 301.157(d-5) states that the Board shall streamline the process for initially approving a school of nursing or educational program under §301.157 by identifying and eliminating tasks performed by the Board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.

Section 301.157(d-6) states that the Board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must: (i) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission; (ii) require the approval process identified under §301.157(d-1) to precede the approval process conducted by the Board; and (iii) be made available on the Board's Internet website and in a written form.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

Section 301.157(d-9) states that a graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under Chapter 301 if: (i) the Board allowed graduates of the program to apply for an initial license under Chapter 301 continuously during the 10-year period preceding January 1, 2007; (ii) the program does not make any substantial changes in the length or content of its clinical competency assessment without the Board's approval; (iii) the program remains in good standing with the state board of nursing or other regulatory body in the other state; and (iv) the program participates in the research study under Section 105.008, Health and Safety Code.

Section 301.157(d-10) states that, in §301.157, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by the Health and Safety Code §105.008.

Section 301.157(d-11) states that §301.157(d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. As part of the first review conducted under §301.003 after September 1, 2009, the Sunset Advisory Commission shall: (i) recommend whether

§301.157(d-8) and (d-9) should be extended; and (ii) recommend any changes to §301.157(d-8) and (d-9) relating to the eligibility for a license of graduates of a clinical competency assessment program operated in another state.

Section 301.157(e) states that the Board shall give each person, including an organization, affected by an order or decision of the Board under §301.157 reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The Board shall hear each protest or complaint from a person affected by a rule or decision regarding: (i) the inadequacy or unreasonableness of any rule or order the Board adopts; or (ii) the injustice of any order or decision of the Board.

Section 301.157(f) states that not later than the 30th day after the date an order is entered and approved by the Board, a person is entitled to bring an action against the Board in a district court of Travis County to have the rule or order vacated or modified, if that person: (i) is affected by the order or decision; (ii) is dissatisfied with any rule or order of the Board; and (iii) sets forth in a petition the principal grounds of objection to the rule or order.

Section 301.157(g) states that an appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

Section 301.157(h) states that the Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Rule: §§215.2 - 215.5, 215.8, and 215.9 - Statute: Occupations Code §301.157 and §301.151.

§215.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) - (8) (No change.)

(9) Clinical learning experiences--faculty planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised, hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies. [~~These experiences occur in actual patient care clinical learning situations; nursing skills and computer laboratories; in simulated clinical settings; in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.~~]

(10) - (18) (No change.)

(19) Differentiated Essential Competencies (DEC)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC). [~~Differentiated Entry Level Competencies (DELC) the expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002* (DELC).~~]

(20) - (25) (No change.)

(26) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing educational program designed for students to complete coursework and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination. [~~MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-RN® examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements as outlined in Chapter 213 of this title (relating to Practice and Procedure).~~]

(27) - (37) (No change.)

(38) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

(39) [~~(38)~~] Staff--employees of the Texas Board of Nursing.

(40) [~~(39)~~] Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

(41) [~~(40)~~] Survey visit--an on-site visit to a professional nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§215.1 [~~§§215.2~~] - 215.13 of this chapter (relating to Professional Nursing Education).

(42) [~~(41)~~] Systematic approach--the organized process in nursing that provides individualized, goal-directed nursing care by performing comprehensive nursing assessments regarding the health status of the client, making nursing diagnoses that serve as the basis for the strategy of care, developing a plan of care based on the assessment and nursing diagnosis, implementing nursing care, and evaluating the client's responses to nursing interventions.

(43) [~~(42)~~] Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

(44) [~~(43)~~] Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

§215.3. Program Development, Expansion, and Closure.

(a) (No change.)

(b) Extension Program/Campus.

(1) (No change.)

(2) Instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program's curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§215.1 [~~§§215.2~~] - 215.13 of this chapter (relating to Professional Nursing Education).

(3) - (6) (No change.)

(c) - (e) (No change.)

§215.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) - (2) (No change.)

(3) Full or initial approval with warning is issued by the Board to a professional nursing educational program that is not meeting legal and educational requirements.

(A) - (B) (No change.)

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program the opportunity to correct deficiencies.

(A) - (B) (No change.)

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status from conditional approval to full approval or full approval with warning, or may withdraw approval.

(5) - (6) (No change.)

(b) (No change.)

(c) Ongoing Approval Procedures. Approval status is determined biennially by the Board on the basis of the program's compliance audit, NCLEX-RN® examination pass rate, and other pertinent data.

(1) (No change.)

(2) NCLEX-RN® Pass Rates.

(A) - (B) (No change.)

~~[(C) A warning shall be issued to the program when the pass rate of first-time candidates, as described in subparagraph (A) of this paragraph, is less than 80% for two consecutive examination years.]~~

~~[(D) A program shall be placed on conditional approval status if, within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-RN® examination fails to be at least 80%, or the faculty fails to implement appropriate corrective measures.]~~

~~[(E) Approval may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program is placed on conditional approval.]~~

~~[(F) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.]~~

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:

(i) the pass rate of first-time candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two consecutive examination years;

(ii) the program has been in serious violation of the rules and regulations; or

(iii) the program has engaged in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards.

(B) A program may be placed on conditional approval status if:

(i) within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-RN® examination fails to be at least 80%;

(ii) the faculty fails to implement appropriate corrective measures during the year; or

(iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards.

(C) Approval may be withdrawn if:

(i) the performance of first-time candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval;

(ii) the program is consistently unable to meet requirements issued by the Board; or

(iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting legal requirements and standards.

(D) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if:

(i) the program's pass rate for first-time candidates during one examination year is at least 80%; and

(ii) the program has met all Board requirements.

(4) [~~(3)~~] Survey Visit. Each professional nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, compliance audit, and NCLEX-RN® examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(5) [~~(4)~~] The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) [~~(5)~~] The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(7) [~~(6)~~] The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(A) meet the prescribed course of study or other standard under which it sought approval by the Board;

(B) meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in paragraph (8) [~~(7)~~] of this subsection, with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board; and

(C) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(8) [~~(7)~~] A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(B) maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(9) [~~(8)~~] A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(10) [~~(9)~~] A school of nursing or educational program, approved by the Board as stated in paragraph (8) [~~(7)~~] of this subsection, that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards is subject to review by the Board.

(11) [~~(10)~~] The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(12) [~~(11)~~] A school or program from which approval has been withdrawn may reapply for approval.

(13) [~~(12)~~] A school of nursing or educational program accredited by an agency recognized by the Board shall:

(A) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(B) notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(C) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) (No change.)

§215.5. Philosophy/Mission and Objectives/Outcomes.

(a) (No change.)

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC). [~~*Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002* (DELC).~~]

(c) - (e) (No change.)

§215.8. Students.

(a) - (b) (No change.)

[~~(c) The professional nursing educational program shall maintain written receipt of eligibility notification for up to six months after the enrolled individual completes the nursing educational program or permanently withdraws from the nursing educational program.~~]

(c) [~~(d)~~] The program shall have well-defined written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented and enforced.

(1) Student policies shall be in accordance with the requirements of applicable federal and state agencies.

(2) Nursing student policies which differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(d) [~~(e)~~] Reasons for dismissal shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to:

(1) evidence of actual or potential harm to patients, clients, or the public;

(2) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency;

(3) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and

(4) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which, in the judgment of the Board, indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(e) [~~(f)~~] Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(f) [~~(g)~~] Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the nursing educational program.

(1) The program shall maintain a signed receipt of student policies in all students' records.

(2) It is the responsibility of the program and the nursing faculty to define and enforce nursing student policies.

(g) [~~(h)~~] Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the controlling agency/governing institution. Upon completing the receiving program's requirements, the individual is considered to be a graduate of the program.

(h) [~~(i)~~] Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(i) [~~(j)~~] Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

§215.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) - (6) (No change.)

(7) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (DIP/AND), Baccalaureate Degree (BSN), October 2010* (DEC) [~~*Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/AND), Baccalaureate (BSN), September 2002* (DELC)~~]; and

(8) (No change).

(b) (No change.)

(c) Instruction shall include, but not be limited to, organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, simulated laboratory instruction, and faculty-supervised, hands-on [~~actual~~] patient care clinical learning experiences.

(1) - (4) (No change.)

(d) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006066
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 305-6869

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 319. GENERAL REGULATIONS INCORPORATED INTO PERMITS

SUBCHAPTER C. PUBLIC NOTICE OF SPILLS OR ACCIDENTAL DISCHARGES FROM WASTEWATER FACILITIES OWNED OR OPERATED BY LOCAL GOVERNMENTS

30 TAC §319.302, §319.303

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §319.302 and §319.303.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Chapter 319, Subchapter C requires wastewater facilities owned by local governments to notify local governments and local media following certain wastewater spills and discharges. The rule establishes when notification is required and includes the form used to provide such notifications. The notification form provides recommended safety actions for the general public to take in the event of a wastewater spill or discharge. These rules were originally created in response to a specific wastewater spill into Brushy Creek in the Austin Metropolitan area that resulted in bacterial infection for several residents residing in the impacted area of the spill. The recommended safety precautions currently contained in the spill notice form at §319.303 were specifically worded for this spill event. However, the recommended safety precautions are not applicable to all wastewater spill events and have resulted in confusion amongst the general public for spill events in other areas.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §319.302, Notification Requirements, to provide clarification to the regulated community and general public on when and under what conditions notice must be provided.

The commission proposes to amend §319.303, Form of the Notice to Local Officials and Local Media, to provide clarification to the regulated community concerning what information must be included in a notice of a wastewater spill and to clarify precautionary language that may be contained in a wastewater spill notice for the general public. Additionally, the proposed amendments will remove the form from the rule replacing it with minimum notification requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rules.

Current agency rules specify the notification requirements wastewater facilities owned by local governments are to take when certain spills and discharges affecting drinking and surface water occur. Current rules also specify a notification form, which provides recommended safety actions for the general public. Not all safety actions appearing on the form are applicable for every spill or discharge, and the language on the form has created confusion among the general public and wastewater facilities owned by local governments regarding which actions to take.

The proposed rules would no longer include the notification form but would specify where local governments can find a spill notice template on the agency Web site. The proposed rules specify the minimum notification elements and precautionary statements that wastewater or collection facilities owned by local governments must use when certain spills and discharges occur that may affect drinking water and surface water. The proposed rules do not eliminate or add any new notice requirements or precautionary actions to protect the general public, but clarify the appropriate precautionary actions that are to be taken. The proposed rules are expected to generate more efficiency for the agency and local governments when responding to the public and reporting on such events. Local governments may see some cost savings because of more efficient use of staff time, but savings are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a greater understanding of what actions local governments should take in the event of a wastewater spill or discharge, which will contribute to a more efficient and prompt protection of public health and safety.

The proposed rules clarify the notice requirements and safety actions that a wastewater or collection facility owned by a local government should use in the event of a spill or discharge. Individuals and businesses should receive clearer information, but no significant fiscal implications are anticipated for individuals or businesses as a result of the proposed rules.

The proposed rules will not affect businesses that own wastewater treatment or collection facilities as they apply only to those facilities owned or operated by local governments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own wastewater treatment or collection facilities since they pertain to those facilities owned or operated by local governments. Small or micro-businesses that are customers of wastewater treatment or collection facilities owned or operated by a local government should receive clearer information in the event of a discharge or spill.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The proposed rules do not adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. The proposed rules are designed to protect human health by reducing potential exposure to accidental discharges or spills from wastewater treatment and collection facilities.

The economy, a sector of the economy, productivity, competition, or jobs will not be adversely affected in a material way because the additional costs caused by the rules are minimal. There are no costs to businesses or the private sector. The proposed rules will potentially add costs for notice to local governments and local media. The additional costs added by the rules are not substantial, however, because the local governments are already required by Texas Water Code (TWC), §26.039(b) to notify the commission of all spills which cause, or may cause, pollution.

The proposed rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the proposed rules are designed to protect human health by reducing potential exposure to accidental discharges or spills from wastewater treatment and collection facilities owned or operated by a local government.

This proposal does not exceed a standard set by federal law and is specifically required by state law. There is no standard set by federal law for notification of local governments and local media of spills from wastewater treatment or collection facilities owned or operated by local governments. The proposed rules are specifically required by TWC, §26.039(f), to specify the conditions under which a spill must be reported to appropriate local government officials and local media. This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government. There is no agreement or contract between the commission and the federal government concerning notification of local governments and local media of spills from wastewater treatment or collection facilities owned or operated by local governments.

The proposed rules are not adopted solely under the general powers of the commission; instead, they are adopted under a specific state law. The specific state law is TWC, §26.039(f), which requires the commission by rule to specify the conditions under which a spill must be reported to appropriate local government officials and local media.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rules is to implement the requirements of House Bill 1074, 76th Legislature, 1999, which amends TWC, §26.039, to require notice to local governmental officials and local media of spills or accidental discharges from wastewater treatment or collection facilities owned or operated by local governments. The proposed rules substantially advance this specific purpose by identifying which entities must report and the conditions under which these reports must be made. This proposed rulemaking improves the usefulness of the form of the notice to local government officials and local media. Promulgation and enforcement of these proposed rules will not burden private real property. The proposed rules only affect wastewater treatment or collection facilities owned or operated by local governments.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 9, 2010, at 10:00 a.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Natalia Henricksen, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-024-319-OW. The comment period closes December 13, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Lynda Clayton, Water Quality Assessment Section, (512) 239-4591.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §26.039(f), which requires the commission by rule to specify the conditions under which a spill from a wastewater treatment or collection facility owned or operated by a local government must be reported to appropriate local government officials and local media, including the content of the notice; and TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement TWC, §§5.103, 5.105, and 26.039.

§319.302. Notification Requirements.

(a) The owner of a facility must designate a responsible individual to comply with this subchapter.

(b) In addition to the noncompliance notification to the commission required by §305.125(9) of this title (relating to Standard Permit Conditions) and any notification required under Chapter 327 of this title (relating to Spill Prevention and Control), the owner of a facility, through its responsible individual, must notify appropriate local government officials and the local media (see §319.301 of this title (relating to Definitions)) whenever one of the following types of spills occurs from the facility:

(1) a spill, regardless of volume, that has the potential to contaminate [~~the facility owner knows or has reason to know, will adversely affect~~] a public or private source of drinking water or waters in the state commonly used for recreational purposes;

(2) a spill with a volume of 50,000 gallons or more where one or more of the following conditions also exists:

(A) the spill occurs [~~enters water in the state~~] within 1/2-mile of a public or private source of drinking water [~~that has been assessed by the commission as vulnerable to contamination~~];

(B) the spill occurs [~~enters water in the state~~] within 1/2-mile of a private drinking water well which is [~~source of drinking water~~] located within 1/2-mile of a public water supply well [~~source of drinking water that has been assessed by the commission as vulnerable to contamination~~];

(C) the spill occurs [~~enters water in the state~~] within 1/2-mile up-gradient of a surface water [~~public or private source of drinking water surface water~~] intake of a public or private source of drinking water;

(D) the spill occurs in an active groundwater recharge area;

(E) the spill occurs up-gradient and within 1/2-mile of a karst terrain or shallow alluvial well that is a source of drinking water;

(3) a spill of 100,000 gallons or more.

(c) The responsible individual must issue the notice [~~using the form in §319.303 of this title (relating to Form of the Notice to Local Officials and Local Media)~~] as quickly as possible, but not later than 24 hours after the facility becomes [~~becoming~~] aware of the spill. The notice [~~must be delivered in an expeditious manner. It~~] may be hand-delivered, sent by facsimile, e-mail, or by phone with follow-up written notice. The contents of the notice must comply with §319.303 of this title (relating to Notice to Local Officials and Local Media.)

(d) Within 48 hours of providing [~~Immediately after giving of~~] notice to appropriate local government officials and local media, the responsible individual must provide [~~report~~] to the commission regional

office in whose region the spill occurred a copy of the notice, the date notice was provided to local officials and local media, and a list of notice recipients [~~that this notice was given~~].

§319.303. [~~Form of the~~] Notice to Local Officials and Local Media.

(a) Persons responsible for a wastewater spill must ensure notice complies with subsections (b) and (c) of this section. Responsible persons may contact the commission to obtain a template which may be used in the event of a wastewater spill. [~~The notice must be in the following form:~~]

[~~Figure: 30 TAC §319.303~~]

(b) For all wastewater spills as referenced in §319.302(b) of this title (relating to Notification Requirements) the notice must contain the following:

(1) one of the following statements:

(A) a spill from a wastewater treatment facility has occurred; or

(B) a spill from a collection facility has occurred;

(2) the facility name;

(3) person to contact for further information;

(4) the location of the spill;

(5) the estimated date and time of the spill;

(6) the estimated volume of the spill (number of gallons);

(7) the type of the spill (domestic, industrial, etc.);

(8) a description of the area potentially affected, including a down-gradient and lateral distance from the spill site;

(9) the suspected cause of the spill; and

(10) a list of actions that have been taken including, but not limited to:

(A) notification of:

(i) appropriate local government officials; and

(ii) the TCEQ regional office;

(B) containment of the spill;

(C) increased monitoring of water supply systems; and

(D) initiation or completion of clean up activities.

(c) If the wastewater spill meets the conditions of §319.302(b)(2) and/or (b)(3) of this title then the notice must also contain the following precautionary statements:

(1) Persons using private drinking water supply wells located within 1/2-mile of the spill site or within the potentially affected area should use only water that has been distilled or boiled at a rolling boil for at least one minute for all personal uses including drinking, cooking, bathing, and tooth brushing. Individuals with private water wells should have their well water tested and disinfected, if necessary, prior to discontinuing distillation or boiling.

(2) Persons who purchase water from a public water supply may contact their water supply distributor to determine if the water is safe for personal use.

(3) The public should avoid contact with waste material, soil, or water in the area potentially affected by the spill.

(4) If the public comes into contact with waste material, soil, or water potentially affected by the spill, they should bathe and wash clothes thoroughly as soon as possible.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006029
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER A. RULES, PRACTICE, AND PROCEDURE FOR LAND LEASES AND TRADES

31 TAC §13.2

The School Land Board proposes an amendment to 31 TAC Part 1, Chapter 13, relating to Land Resources, §13.2, relating to Land Trades.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

The intent of this rulemaking is to clarify and amend the rules related to approval of trades of permanent school fund land by the School Land Board ("Board"), in conjunction with the General Land Office ("GLO"), in order to reflect certain statutory changes made during the 81st Legislative Regular Session by House Bill (HB) 3461 (Acts 2009, 81st Legislature, Chapter 1175, effective June 19, 2009). That Act amended Texas Natural Resources Code §32.253, which sets forth the purposes for which land dedicated to or acquired for the use and benefit of the permanent school fund may be traded, and allowed the Board more discretion to approve trades of land which are determined to be in the best interest of the fund.

The proposed amendment to §13.2 removes existing language describing various purposes for which land dedicated to or acquired for the use and benefit of the permanent school fund may be traded in its entirety, and substitutes those purposes enumerated and described in Texas Natural Resources Code §32.253, as amended by the 81st Legislature. As amended, §13.2 will state that such lands may be traded to (1) aggregate sufficient acreage of contiguous land to create a manageable unit; (2) acquire land having unique biological, geological, cultural, or recreational value; (3) create a buffer zone for the enhancement of already existing public land, facilities or amenities; or (4) acquire land for the use and benefit of the permanent school fund as determined by the Board to be in the best interest of the fund.

FISCAL AND EMPLOYMENT IMPACTS

Hal Croft, Deputy Commissioner for the GLO's Asset Management Division, has determined that for each year of the first five

years the amended section as proposed is in effect, there will be no significant fiscal implications for state government as a result of enforcing or administering the amended section. Further, there will be no significant fiscal impact on local governments for each of the first five years the amendment as proposed is in effect as a result of enforcing or administering the rule.

Mr. Croft has also determined that for each year of the first five years the amended section as proposed is in effect, there will be no increase in economic costs to small or large business for compliance. There will be no significant economic costs to persons as a result of enforcing or administering the rule.

Mr. Croft has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Croft has determined that the public will benefit from the rule clarification provided by the proposed amendment, as well as from the incorporation of changes made by the Texas Legislature to the GLO's governing statutes.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to Chapter 13 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is not subject to the Coastal Management Program ("CMP"), as outlined in 31 TAC §505.11, relating to the Actions and Rules Subject to the CMP.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

This amendment is proposed under Texas Natural Resources Code §32.253, describing the purposes for which permanent school fund land may be traded. Texas Natural Resources Code §32.205 provides that the Board may adopt rules to carry out the provisions of Chapter 32 of the Texas Natural Resources Code.

Texas Natural Resources Code §32.253 is affected by the proposed amendment.

§13.2. Land Trades.

(a) Purpose. Land dedicated to or acquired for the use and benefit of the permanent school fund may be traded to: [~~Trades may be made either for the purpose of aggregating sufficient acreage of contiguous land to create a manageable unit or to create a buffer zone for the protection and preservation of lands for a unique scenic, historical, or archaeological value or for the purpose of acquiring land for having a unique scenic, historical, or archaeological value for the public trust.~~]

(1) aggregate sufficient acreage of contiguous land to create a manageable unit;

(2) acquire land having unique biological, geological, cultural, or recreational value;

(3) create a buffer zone for the enhancement of already existing public land, facilities, or amenities; or

(4) acquire land for the use and benefit of the permanent school fund as determined by the School Land Board to be in the best interest of the fund.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006062
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §§25.1, 25.4, 25.6

The Teacher Retirement System of Texas (TRS) proposes amendments to §§25.1, 25.4, and 25.6, concerning service eligible for TRS membership. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter A defines

employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. The subchapter also addresses how other types of employment in positions unique to the public education such as substitutes and bus drivers may be considered eligible for membership in TRS.

Section 25.1 concerns the determination of regular, full-time service. A person employed by a TRS covered employer in a position that is determined to be regular, full-time service is eligible for TRS membership. TRS proposes amending the section with regard to the minimum amount of employment that will qualify an employee of a TRS-covered employer for membership. The requirements for membership as currently stated are largely based on statutory requirements: "employee" means a person who is employed, as determined by the retirement system, on other than a temporary basis by an employer for at least one-half time at a regular rate of pay comparable to that of other persons employed in similar positions. Section 25.1 currently defines one-half time and addresses how to determine one-half time if there is no full-time equivalent position. Distinctions are currently made between certified and non-certified positions. TRS proposes deleting the distinction between certified and non-certified positions and requiring a person in any position to be employed for a minimum of 15 hours per week to establish membership eligibility in TRS. That minimum will apply if there is no full-time equivalent position; otherwise, the position must be one-half or more of the full-time load. The proposed change will likely impact eligibility for bus drivers. In the past, bus drivers could establish eligibility by driving a minimum of one route per day provided the route complied with Texas Education Agency (TEA) guidelines. The proposed change will impose a 15 hour per-week minimum on bus drivers as well but eliminate the requirement for having a route that complies with TEA guidelines. In addition, TRS proposes removing the requirement in §25.1(b) that the employment criteria be met in one school year. TRS' experience with the current rule has been that employees who are hired late in a school year when there is insufficient time to establish a year of service credit are not reported to TRS even though the employment is sufficient to establish membership in TRS. This change will clarify that membership eligibility is determined based on the position, not on the employment date.

Section 25.4 addresses how a person employed as a substitute may be considered eligible for membership in TRS. TRS proposes changes to this section that remove the requirement that substitute service credit, once it is verified, must be purchased before any benefit is paid by TRS. TRS proposes to modify the rule to say that a member must purchase the substitute service before it is used in calculating the amount of benefits paid by TRS and before it is used to determine eligibility for benefits. TRS also proposes including language in §25.4 that clarifies that substitute service established by paying required amounts is credited in the year it was rendered, not the year it was purchased.

Section 25.6 addresses part-time or temporary employment. TRS proposes minor wording changes for consistency with TRS §25.1 regarding the type of employment required to establish membership eligibility. The proposed amendment of §25.6 clarifies that the amount and duration of the employment in question determines eligibility, not the date of employment.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§25.1, 25.4, and 25.6 will be in effect, there may be fiscal implications to state or local governments as a result of administering the proposed amended rules. A public education employer may determine that some individuals employed in positions previously eligible for TRS membership are no longer eligible for TRS membership; similarly, an employer may determine that some individuals employed in positions previously not eligible for TRS membership will now be required to be reported as members. The amendments would apply prospectively, and employers may be required to adjust the status of certain employees as TRS members, with commensurate prospective changes in employer contributions to TRS for members whose status changes. Employers are required to pay the equivalent of the state contribution for new members in the first 90 days of employment and are required to pay a contribution to TRS-Care on behalf of eligible employees; employers also are required to pay an amount equivalent to the state contribution on salary above the statutory minimum. To the extent an employer will report fewer or more employees as TRS members, the employer's contributions to TRS may decrease or increase. TRS cannot precisely estimate the aggregate fiscal implications for public education employers because it is not known how many employees will be subject to a change in status regarding TRS membership eligibility.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify and simplify the determination of TRS membership eligibility for regular, full-time service and substitute service, including clarification of what constitutes part-time or temporary employment.

Mr. Guthrie has determined that there may be economic cost to entities or persons required to comply with the proposed rules. Certain bus drivers may be affected by the proposed amendments by their being determined to be ineligible for TRS membership and benefits. For an individual who became a TRS member based on employment in a position previously eligible for membership but whose ongoing employment is no longer considered TRS-eligible under the changes, the employee would not be able to accrue additional years of service credit for the employment. No employer or employee contributions would be due on compensation for the service that is no longer eligible for membership under the changes. Some employees previously ineligible for TRS membership may become eligible for membership, due to the reduction in required minimum hours from 20 to 15 for classified positions or due to the elimination of the requirement to drive one approved bus route per day. TRS cannot estimate how many bus drivers or other employees will experience a change in status regarding eligibility for TRS membership and for the accrual of TRS benefits because of the amended rule or any related economic costs because of the variable employment and reporting practices of individual employers. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect the following sections of the Government Code: §821.001(6), which defines "employee"; §822.001, which states the membership requirement; §823.002, which addresses service creditable in a year; and §825.403 addressing collection of member contributions.

§25.1. Full-time Service.

(a) Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more [~~in one school year~~].

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) If there is no equivalent full-time position of a given [~~non-certified~~] position, the minimum number of hours required per week that will qualify the position for TRS membership is 15. This requirement applies to all positions, including bus drivers. [~~If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.~~]

(f) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment that is expected to continue for less than four and one-half months is temporary employment and is not eligible for membership.

(g) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

§25.4. Substitutes.

(a) Persons who serve as substitutes in positions otherwise eligible for membership may qualify for membership provided that they serve for at least 90 days in one school year.

(b) For purposes of this title, a substitute is a person who serves on a temporary basis in the place of a current employee. A substitute may be paid no more than the daily rate of pay set by the employer.

(c) Membership may be established and credit received by verifying the number of days worked as a substitute and salary earned and making the required deposits under §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation). Verification must be made on a form prescribed by the retirement system.

(d) In no event shall verification of substitute service be accepted after a member has retired from the system and his or her first monthly annuity payment has been issued or after the effective date of a member's participation in the Deferred Retirement Option Plan (DROP).

(e) Required [~~Once substitute service is verified as provided in subsection (c) of this section, required~~] deposits and fees must be paid before any benefits based on the verified substitute service are paid by TRS on behalf of the member or before the verified service is used to determine eligibility for benefits. Members claiming credit for such service will be assessed a fee for delinquent deposits, if applicable, as provided in §25.43 of this title.

(f) Payment for substitute service required in subsection (e) of this section will be accepted and credit granted only as permissible under the Internal Revenue Code.

(g) Substitute service purchased as provided in this section shall be included in the school year in which it was rendered in counting the amount of service provided in order to receive a year of service credit under §25.131 of this title (relating to Required Service) [~~considered the equivalent of at least four and 1/2 months of service. Members claiming credit for such service will be assessed a fee for delinquent deposits, if applicable, as provided in §25.43 of this title (relating to Deposits for Unreported Service)~~].

§25.6. Part-time or Temporary Employment.

Part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months) [~~during a school year~~] is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006049
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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34 TAC §25.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Teacher Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Teacher Retirement System of Texas (TRS) proposes repealing §25.2, concerning service eligible for TRS membership by school bus drivers. The proposed repeal arises from TRS'

four-year rule review of Chapter 25, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. The subchapter also addresses how other types of employment in positions unique to the public education such as substitutes and bus drivers may be considered eligible for membership in TRS.

Section 25.2 establishes minimum requirements for membership eligibility for bus drivers. TRS proposes repealing the section because proposed amendments to TRS §25.1 concerning full-time service negate the need for a special rule devoted to bus drivers. The proposed amendments to §25.1, which are published elsewhere in this issue of the *Texas Register,* set a minimum of 15 hours of work per week for membership eligibility for all employees, including bus drivers.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that the proposed repeal of §25.2 will be in effect, there may be fiscal implications to state or local governments as a result of administering the proposed repeal in conjunction with proposed changes to TRS §25.1 concerning full-time service, which are published elsewhere in this issue of the *Texas Register.* A public education employer may determine that some individuals employed in bus driver positions previously eligible for TRS membership are no longer eligible for TRS membership. Similarly, an employer may determine that some individuals employed in bus-driver positions previously not eligible for TRS membership because they did not drive at least one approved route per day will now be required to be reported as members, because they work at least 15 hours per week. The amendments would apply prospectively, and employers may be required to adjust the status of certain employees as TRS members, with commensurate prospective changes in employer contributions to TRS for members whose status changes. Employers are required to pay the equivalent of the state contribution for new members in the first 90 days of employment and are required to pay a contribution to TRS-Care on behalf of eligible employees; employers also are required to pay an amount equivalent to the state contribution on salary above the statutory minimum. To the extent an employer will report fewer or more employees as TRS members, the employer's contributions to TRS may decrease or increase. TRS cannot precisely estimate the aggregate fiscal implications for public education employers because it is not known how many employees will be subject to a change in status regarding TRS membership eligibility.

For each year of the first five years that the proposed repealed rule will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify and simplify the determination of TRS membership eligibility for all employees, thereby eliminating the need for a special rule devoted to bus drivers.

Mr. Guthrie has determined that there may be economic cost to entities or persons required to comply with the proposed rules. Certain bus drivers may be affected by the proposed amendments by their being determined to be ineligible for TRS membership and benefits. For an individual who became a TRS member based on employment in a position previously eligible for membership but whose ongoing employment is no longer considered TRS-eligible under the changes, the employee would not be able to accrue additional years of service credit for the employment. No employer or employee contributions would be due on compensation for the service that is no longer eligible for membership under the changes. Some bus driver employees previously ineligible for TRS membership because they did not drive at least one approved route per day or meet any other eligibility requirement may become eligible under the 15 hour per week requirement. TRS cannot estimate how many bus drivers or other employees will experience a change in status regarding eligibility for TRS membership and for the accrual of TRS benefits because of the amended rule or any related economic costs because of the variable employment and reporting practices of individual employers. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed repeal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed repeal; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The repeal is proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed repeal affects the following sections of the Government Code: §821.001(6), which defines "employee"; §822.001, which states the membership requirement; §823.002, which addresses service creditable in a year; and §825.403 addressing collection of member contributions.

§25.2. Bus Drivers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006050
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER B. COMPENSATION

34 TAC §§25.21, 25.24, 25.25, 25.28, 25.31, 25.35

The Teacher Retirement System of Texas (TRS) proposes amendments to §§25.21, 25.24, 25.25, 25.28, 25.31, and 25.35, concerning creditable compensation. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter B, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter B addresses various types of compensation typically paid to public education employees and whether such compensation is creditable for TRS benefit calculation purposes.

Section 25.21 generally concerns compensation subject to deposit and credit. TRS proposes changes to this section to address types of compensation that have been reported incorrectly to TRS as creditable compensation or have been under-reported to TRS. Types of compensation that have been reported incorrectly and that are specifically excluded as creditable compensation in the proposed changes include cell phone allowances; signing and retention bonuses; payments under Chapter 21, Subchapter O (§§21.701 - 21.707) of the Education Code, implemented by the Texas Education Agency (TEA) as the District Awards for Teacher Excellence (DATE) grant program, that do not represent payments for service rendered by the member; and money paid pursuant to a settlement agreement that does not represent salary as that term is defined for TRS purposes. TRS proposes additional language to clarify that differential pay of less than 50% of the compensation for a full-time position should not be reported to TRS. Differential pay is identified as pay to a member who leaves for military duty and represents all or some of the difference in the pay the member receives for military duty and the pay the member would have received in the TRS-covered position.

Section 25.24 addresses performance pay. TRS proposes a change in crediting performance pay. Performance pay currently is credited in the year in which it is earned. This policy results in TRS having to manually adjust pay retroactively to include the pay in the year it was earned. This policy adds considerable work and processing, especially when performance pay is received after retirement. TRS proposes changing the policy to credit performance pay in the year it is paid and to decline to accept TRS contributions on performance pay paid after retirement. Crediting the performance pay in the year it is paid, rather than the year it is earned, results in the member receiving credit each year for performance pay and encourages TRS-covered employers to distribute performance pay in a timely manner to employees who are retiring.

Section 25.25 concerns required deposits by TRS members and their employers. TRS proposes changes to this rule to clarify that contributions must be made on salary received from employment that would not qualify for membership on its own but when combined in the same school year with other eligible employment, results in qualifying employment.

Section 25.28 concerns payroll report dates. TRS proposes adding language in subsection (e) that requires the employer to obtain a written determination from TRS regarding whether amounts paid pursuant to a settlement agreement are creditable for TRS purposes before reporting the amounts paid and submitting deposits on behalf of the member to TRS. This proposed amendment is intended to encourage members and their attorneys to contact TRS before signing a settlement agreement so that the agreement can be drafted in such a way that the document clearly establishes that the compensation is creditable for TRS purposes or that the member is on notice that the compensation is not creditable and can use that information when negotiating the settlement.

Section 25.31 concerns percentage limits on compensation increases. TRS proposes amending this rule to address how the percentage limits will be determined for non-grandfathered members (using a five-year salary average instead of a three-year salary average) and to eliminate the exceptions in subsection (f) for compensation received in the 2011-2012 school year and after. This rule was adopted pursuant to a statutory mandate to help prevent salary "spikes" in the years just prior to retirement. Salary spiking can be harmful to the fund and result in disproportionate liability based on the last few years of salary. The exceptions to the percentage limit were the result of compromise by the TRS Board of Trustees but have resulted in additional workload caused by manual adjustments and research required to properly administer the exceptions. Automation of certain processes is difficult as a result. Further, salary "spiking" harms the fund without regard to the reason for the spiking. To fully protect the fund and to allow for more efficient processing, TRS proposes discontinuing the exceptions after the 2010-2011 school year.

Section 25.35 concerns employer payments for new members. TRS proposes deleting references to periods occurring in the past and that are no longer applicable. These references to past periods can be confusing and are no longer necessary to administer the rule.

Brian Guthrie, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§25.21, 25.24, 25.25, 25.28, 25.31, and 25.35 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules. Any fiscal impact to the state or local governments will be negligible because of the relatively small portion of the annual statewide payroll affected by the proposed rules. Generally, state and local governments will experience a positive fiscal implication when additional compensation intended to inflate final years of creditable salary and to inflate retirement benefits is not allowed as creditable; local governments are not required to pay employer contributions on compensation that is not creditable, and the TRS fund is protected from the actuarial impact of unusually high salary increases in the final years before retirement.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to provide notice, clarification, and guidance to employers and members of the requirements and procedures relating to the determination of creditable compensation and limits on compensation increases during what are usually a member's last years of employment. The public benefit will also be to reasonably implement applicable law concerning creditable compensation in light of the various compensation arrangements into which employers and employees enter, including §822.201 of the Government Code, which describes compensation subject to reporting by employers and crediting by TRS in benefit calculations, and §825.110 of the Government Code, which requires the TRS Board of Trustees (board) to adopt rules that include a percentage limit on increases in annual compensation.

Mr. Guthrie has determined that there may be economic cost to entities or persons required to comply with the proposed rules. The proposed sections address what compensation is creditable for TRS purposes and thus determine the compensation on which member contributions and TRS-Care contributions must be paid and on which TRS retirement plan benefits may be based. Because benefits calculations would only be affected if the compensation was paid in one of the three or five years that the member receives his or her highest salary, it is difficult to estimate any actual cost to a member. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result

of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and under §825.110 of the Government Code, which requires the board to adopt rules that include a percentage limit on increases in annual compensation.

Cross-Reference to Statute: The proposed amendments affect §821.001(4) of the Government Code, which defines "annual compensation," and §822.201 of the Government Code, which describes compensation subject to report and credit.

§25.21. Compensation Subject to Deposit and Credit.

(a) - (c) (No change.)

(d) The following are excluded from annual compensation:

(1) allowances, including housing, car, cell phone, and expense allowances;

(2) - (4) (No change.)

(5) bonus and incentive payments, including signing or retention bonuses that are offered to entice a person to enter into an employment arrangement or to stay for a period of time in an employment arrangement, whether paid under Subchapter O, Chapter 21 of the Education Code or other authority, unless state law expressly provides that a type of bonus or incentive payment is to be considered TRS-creditable compensation [~~or the payments otherwise qualify as performance pay under subsection (c)(6) of this section~~];

(6) - (11) (No change.)

(12) payments that an employer intentionally does not include in salary and wages because they are not expected to be permanently recurring in each pay period of employment or because they are not considered base pay and that, for the protection of the actuarial soundness of the retirement system, the type of payment should not be included in the calculation of a lifetime retirement benefit intended to replace a percentage of the member's base pay at retirement; [~~and~~]

(13) payments for terminating employment or paid as an incentive to terminate employment. Examples of such payments include payments for contract buy-outs, amounts paid pursuant to an agreement in which the employee agrees to terminate employment or to waive or release rights to future employment, and amounts paid pursuant to early retirement incentive programs or other programs intended to increase the compensation paid to the employee upon receipt of the resignation of the employee or the waiver or release of rights to future employment. Increased compensation paid in the final year of employment prior to retirement that exceeds increases approved by the employer for all employees or classes of employees is presumed to be payment for terminating employment;[~~.~~]

(14) payments received under relevant parts of the educator excellence awards program under Subchapter O of Chapter 21, Education Code that do not represent payments for service rendered by the member;

(15) except as provided in §25.28(e) of this title (relating to Payroll Report Dates), amounts paid pursuant to a settlement agreement; and

(16) differential pay that is less than 50% of the compensation for service in a full-time position. Differential pay is pay by an employer to a member who leaves membership eligible employment to serve in the military and the pay represents all or some of the difference between what the member earned in the TRS covered employment and what he or she is earning in the military job. Differential pay that is at least 50% of the compensation for full-time service in the membership eligible position may be reported to TRS and deposits submitted at the discretion of the employer.

(e) - (f) (No change.)

§25.24. Performance Pay.

(a) - (b) (No change.)

(c) Performance pay is compensation for service as an employee in a Texas public educational institution that is paid under a valid employment agreement based upon a performance standard published in written documents adopted by the employer. The performance standard may be based on evaluations or goal achievement of the individual employee or of the group in which the individual belongs. Specific amounts of performance pay will be credited to the year in which the performance pay is paid [~~standards establishing the right to the performance pay are met or in which the service occurred, whichever is earlier~~].

(d) An employer shall certify each year to the retirement system, by a date specified by the system on a form prescribed by TRS, whether it is providing performance pay under this section. A district that has properly made this certification shall report all qualifying performance pay as compensation and make appropriate deductions for member contributions unless the retirement system advises the employer that such pay does not qualify as performance pay under this rule. Employer shall maintain records that show it provides such pay for a period not less than 7 years after such pay is reported to the retirement system.

(e) Performance [~~If performance~~] pay earned during the school year in which the member retires or any previous school year and [~~is~~] paid after the member has begun receiving retirement benefits is not creditable by TRS and will not be used in any benefit calculation.[~~, any benefit adjustment needed will be made effective the month following the month in which TRS receives the deposits for the performance pay, subject to any applicable limits under 26 United States Code §415.~~]

§25.25. Required Deposits.

(a) - (c) (No change.)

(d) A member employed in an eligible position or in a combination of positions that together qualifies as service eligible for membership, as defined in TRS laws and rules must make contributions on all eligible compensation received from all TRS-covered employers.

§25.28. Payroll Report Dates.

(a) - (d) (No change.)

(e) An employer paying amounts to a member pursuant to a settlement agreement must obtain a written determination from TRS that the amounts are creditable compensation before reporting such amounts to TRS as compensation. In the absence of the written determination from TRS, amounts paid pursuant to a settlement agreement are not creditable compensation for TRS purposes and will not be included in determining the amount of benefits payable by TRS.

§25.31. Percentage Limits on Compensation Increases.

(a) For members who on or before August 31, 2005 had attained the age of 50, had at least 25 years of service credit, or whose combined age and service credit equals 70 or greater, the [~~The~~] amount of compensation credited by TRS in each of the last three school years prior to retirement may not exceed the amount of compensation allowed for the preceding school year by more than 10% or $10,000, whichever is greater.

(b) For members who on or before August 31, 2005 did not meet requirements of subsection (a) of this section, the amount of compensation credited by TRS in each of the last five school years prior to retirement may not exceed the amount of compensation allowed for the preceding school year by more than 10% or $10,000, whichever is greater.

(c) [~~(b)~~] For members meeting the requirements of subsection (a) of this section, the [~~The~~] base line amount used to determine the amount of allowable compensation in the third school year prior to retirement is the greater of either the amount of compensation for the fourth school year prior to retirement or the amount of compensation for the fifth school year prior to retirement. If there is no compensation for either the fourth or fifth school year prior to retirement, the base amount is the earliest salary credited in the three school years prior to retirement. If the member does not have credited compensation in at least three school years during the last five school years prior to retirement, the limit in subsection (a) of this section does not apply.

(d) For members who do not meet the requirements of subsection (a) of this section and who are subject to the restriction in subsection (b) of this section, the base line amount used to determine the amount of allowable compensation in the fifth school year prior to retirement is the greater of either the amount of compensation for the sixth school year prior to retirement or the amount of compensation for the seventh school year prior to retirement. If there is no compensation for either the sixth or seventh school year prior to retirement, the base amount is the earliest salary credited in the five school years prior to retirement. If the member does not have credited compensation in at least five school years during the last seven school years prior to retirement, the limit in subsection (b) of this section does not apply.

(e) [~~(c)~~] The amount of allowable compensation [~~in the third year prior to retirement~~] is the greater of 110% of the base line amount or the amount of compensation in the base year plus $10,000. The amount of allowable compensation for each subsequent year is the greater of 110% of the allowable amount for the previous year or the allowable amount for the previous year plus $10,000.

(f) For school years prior to the 2011-2012 school year, increases in compensation due to a change in employers, a change in duties, additional duties or work, legislation, or federal or state law are not subject to the limits in subsections (a) and (b) of this section and the allowable amount of compensation for the remaining years prior to retirement is calculated using the increased amount.

(g) Beginning on the first day of the 2011-2012 school year and thereafter, all increases in compensation without regard to the reason for the increase, are subject to the limits in subsections (a) and (b) of this section.

~~[(d) Increases in compensation due to a change in employers, a change in duties, additional duties or work, legislation, or federal or state law are not subject to the limits in subsection (a) of this section and the allowable amount of compensation for the remaining years prior to retirement is calculated using the increased amount.]~~

(h) [~~(e)~~] Only compensation earned after the 2005-2006 school or contract year will be subject to the limit on increases described in this section. Salaries earned during the 2005-2006 school year and after will be used in the calculation of the base amount.

(i) [~~(f)~~] TRS will adjust a member's annual compensation at the time of retirement to comply with the limit on creditable compensation in subsections [~~subsection~~] (a) or (b) of this section and refund the member contributions on the amount that exceeds the limits described in this section. The refund will be made after the date on which TRS makes the first annuity payment.

(j) [~~(g)~~] No adjustment in compensation will be made if the limit on compensation increases would not affect the calculation of the member's retirement benefit.

(k) [~~(h)~~] If compensation is adjusted under this section, the member may provide additional information in the form of written documentation to demonstrate that the compensation should be allowed. TRS makes the final determination regarding whether compensation is allowed in the member's benefit calculation.

(l) [~~(i)~~] Upon the request of TRS, the employer shall provide documents or records evidencing the amount and nature of [~~basis for~~] the increased compensation reported to TRS.

§25.35. Employer Payments for New Members.

(a) The [~~Effective September 1, 2005, the~~] employer of a new member as defined by §825.4041, Government Code, shall pay the retirement system the required amount during the first 90 days of employment of the new member. When used in this section, "employer" has the meaning given it in §821.001(7), Government Code.

~~[(b) A person hired before September 1, 2005, whose 90-day waiting period for membership in the retirement system did not end before September 1, 2005, is eligible to participate in the retirement system as a new member starting September 1, 2005.]~~

(b) [~~(c)~~] In determining the period of employment subject to employer payments, the following provisions apply:

(1) An employer shall count the date of employment of a new member as the first day of the 90-day payment period.

(2) An employer shall count calendar days of an employment period on or after September 1, 2005, towards the payment period, regardless of whether the days are in different school years.

(3) An employer shall count calendar days on or after September 1, 2005, during which an individual previously served as an employee with another TRS reporting entity towards the payment period.

(4) An employer shall not count any calendar days between periods of employment towards the payment period.

(5) Service provided by an employee on one calendar day to more than one employer that is a TRS reporting entity shall count as only one calendar day in the payment period. Each employer shall include such an employee's compensation in the aggregate compensation on which employer payment is required.

(6) A person who was hired before September 1, 2005, and who did not complete the 90-day waiting period before that date becomes eligible to participate in the retirement system starting September 1, 2005. The employer shall treat the member as a new member for the purpose of employer payments during the remainder of the 90-day period.

(c) [~~(d)~~] For the purpose of administering this section, the date of employment means the date on which an employee begins to perform service for an employer that is a TRS reporting entity and the service is of a type that would otherwise qualify the employee for membership in

the TRS pension plan, as provided under Subchapter A of this chapter (relating to Service Eligible for Membership). If the date of employment is a holiday or another type of day on which the employer does not normally require actual service to be performed by an employee, the employer may nevertheless count the day as the date of employment if the employer considers the individual to be an employee on that day.

(d) [~~(e)~~] An [~~During September 2005, an employer shall submit employer payments to TRS on compensation paid to an employee for the first full pay period starting on or after September 1, 2005. In subsequent months, an~~] employer shall submit employer payments and member and other required contributions to TRS on compensation paid to an employee for the entire pay period that contains the first date of the employee's eligibility for membership. An employer also shall submit such payments to TRS on compensation paid to an employee for the entire pay period that contains the 90th day of employment. For the purpose of this section, a pay period is the normal, established period of employment for which the employer regularly pays compensation to the employee, regardless of the date on which the employer actually pays the compensation.

(e) [~~(f)~~] An employer required by law to pay the state contribution from certain funds for its employees who are TRS members is not required to make additional payment to TRS under this section during the first 90 days of employment of a new member. [~~A person employed by such an employer before September 1, 2005, shall be eligible for TRS membership in the manner described in subsection (b) of this section.~~]

(f) [~~(g)~~] An employer shall submit reports in a form required by TRS. Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.

(g) [~~(h)~~] An employer shall notify TRS immediately if it has failed to report an employee who was eligible for TRS membership and shall begin to report the employee as a member no later than the month immediately following the month in which the employer discovered the error. The employer shall correct any previous reports filed with TRS and make payments as required by this title.

(h) [~~(i) Because participation in the Optional Retirement Program ("ORP") under Chapter 830, Government Code, is in lieu of participation in TRS, a person employed on or after September 1, 2005, or whose 90-day waiting period expires on or after September 1, 2005, and who is otherwise eligible to elect to participate in ORP may elect to participate in ORP effective September 1, 2005.~~] An election to participate in ORP must be made before the 91st day after becoming eligible to make the election, as required by §830.102, Government Code, but may not be made before the date on which an employee is eligible for TRS membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie Jung
Executive Director
Teacher Retirement System of Texas
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SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

34 TAC §25.131, §25.132

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.131, concerning required service, and §25.132, concerning paid leave time. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter J, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter J establishes the amount of time a member must serve in a TRS-eligible position in order to receive a year of service credit.

Section 25.131 addresses how much work an individual must perform during a school year to receive a year of TRS service credit. The TRS Board of Trustees (board) is solely responsible for this determination. Under the current rule, a year of service credit may be established using three alternative periods of time, depending on the circumstances: 4 and 1/2 months; a full semester of more than 4 calendar months; or 90 days if the member had a contract or work agreement that would qualify the member for a year of service credit but the member could only render 90 days of work. Having three different measures for crediting service has resulted in confusion and misinterpretation of the rule. TRS' experience indicates that most members and TRS-covered employers understand that 90 days of work will render a year of service credit. For most members, only the amount of work in the first and last year of employment are at issue. TRS proposes utilizing a "90 days of work" standard for establishing a year of service credit and eliminating the other two standards, except in the final year before retirement. To address concerns that under the 90-day standard, some retiring members may leave employment shortly after the start of the spring semester, leaving school children without a teacher and causing hardship for employers, TRS proposes an exception during the last year prior to retirement. For the last year prior to retirement, TRS proposes using the full fall-semester standard for retirees. TRS also proposes amending §25.131 to clarify that days of work or paid leave may be counted in meeting the requirements for a year of service credit and that unpaid holidays or days that the TRS-covered employer is closed for business will not be counted.

Section 25.132 concerns the use of paid leave time in determining a creditable year of service. TRS proposes amending the section by adding clarifying language that addresses how holidays and days the TRS-covered employer is closed for business will be counted in determining whether a year of service credit has been earned. The proposed changes to §25.132 are consistent with those proposed for §25.131, as described above in this preamble.

Brian Guthrie, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.131 and §25.132 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to simplify and clarify rules concerning required service and paid leave time, providing clear guidance to employers and employees on how a creditable year of service is earned

and making the determination of service credit more consistent and administratively efficient.

Mr. Guthrie has determined that there will be no foreseeable economic cost to entities or persons required to comply with the proposed rules. The proposed sections address what time is creditable for TRS purposes and thus figure into the calculation of benefits. Members most likely to be affected by going to a single standard of 90 days for a year of service credit are those who plan to retire after the fall semester, which usually does not consist of 90 creditable days. For that reason, TRS has included in proposed §25.131 an exception for retiring members that applies during their last school year of service before retirement and allows them to earn a year of service credit by working for a "full fall semester" in accordance with their employer's calendar. Consequently, it is unlikely that many, if any, members will incur any economic cost as a result of the proposed rules, which generally provide a more generous method of determining a year of service credit. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §823.002 of the Government Code, which authorizes the board to determine by rule the amount of service equivalent to a year of service credit, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter C, of the Government Code, concerning service retirement benefits.

§25.131. Required Service.

(a) Except as provided in subsection (c) of this section, a member must work in a TRS eligible position or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

(b) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and paying deposits and fees for the work as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation).

(c) In the last school year of service before retirement, a member serving in an eligible position who worked or received paid leave for less than 90 days in the school year but worked or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work in an eligible position or receive paid leave from an eligible position for at least ninety days in order to receive a year of service credit for the school year before retirement.

(d) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

[~~(a) Except as provided in subsections (b), (c) and (d) of this section, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.~~]

[~~(b) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.~~]

[~~(c) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title (relating to Employer Verification) and paying deposits and fees for the service as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation).~~]

[~~(d) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.~~]

§25.132. Paid Leave Time.

Paid leave time, including vacation, sick, and administrative leave, used during the normal course of business and for which a member is paid shall be considered as service in determining a creditable year. This ruling does not include summer months between school terms when no service is rendered even though the member may be paid in 12 monthly payments or days in which the employer is closed for business and the days are not included in the employee's required number of work days. Certification of payment and copies of the employer's policy must be provided to TRS on request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ronnie Jung
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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.13 - 31.15, 31.18, 31.19

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.13 - 31.15, 31.18, and 31.19, concerning employment after service retirement. The proposed amendments arise from TRS' four-year rule review of Chapter 31,

Subchapter B, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. In general, a retiree is not entitled to a service or disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third party entity providing personnel to a TRS-covered employer unless the employment meets the requirements for one of the exceptions provided by law to this general rule. Chapter 31 provides TRS-covered employers and retirees with more detailed information and instructions on these exceptions to the general rule than provided in the law. In addition, Chapter 31 establishes the circumstances under which a TRS-covered employer must pay a surcharge to the pension plan for hiring a retiree to work in a TRS-covered position. Subchapter B of Chapter 31 addresses employment after service retirement.

Section 31.13 concerns exceptions relating to substitute service. TRS proposes changes in §31.13(d) that track the language of the statute that authorizes combining substitute service and one-half time employment in the same calendar month, §824.602 of the Government Code. The language of the current rule is confusing and causes retirees to unintentionally exceed the amount of time allowed for working under this exception. The proposed changes make the requirements clearer and easier to communicate. Other changes address a reference to an additional exception that was inadvertently left out of this section, the one for faculty members of professional nursing programs.

Section 31.14 concerns the exception for one-half time employment. TRS proposes changes that will clarify the limits on employment after retirement when combining one-half time employment and substitute work in the same calendar month and delete references to authorization and effective dates occurring in the past that are no longer needed. TRS also proposes a new subsection (e) to clarify the treatment of paid leave in calculating the amount of time available for work under this exception.

Section 31.15 concerns the six-month exception. TRS proposes eliminating references to dates in the section that are obsolete and distracting.

Section 31.18 concerns the bus driver exception. TRS proposes adding language to the section to clarify that a retiree who retired before September 1, 2005, and is working under the bus driver exception may work as much as full time on other work after driving the bus.

Section 31.19 concerns the exception for faculty members of professional nursing programs. TRS proposes eliminating references to dates in the section that are obsolete and distracting.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§31.13 - 31.15, 31.18, and 31.19 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify rules concerning exceptions to the general rule that a TRS retiree is not entitled to a service retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third-party entity providing personnel to a TRS-covered employer.

Mr. Guthrie has determined that there will be no foreseeable economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

§31.13. Substitute Service.

(a) Any person receiving a service retirement annuity who retired after January 1, 2001, may work in a month as a substitute in a public educational institution without forfeiting the annuity payment for that month, provided the pay for work as a substitute does not exceed the daily rate of substitute pay established by the employer.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003, and may not be combined with the substitute service exception without forfeiting the annuity payment except as provided in this chapter.

(c) The exception described in this section is not available to retirees who have elected the exception described in §31.15 of this chapter (relating to Six-Month Exception).

(d) The exception described in this section and the exception for one-half time employment described in §31.14 of this chapter (relating to One-half Time Employment) may be used during the same school year. If the substitute service and the one-half time employment occur in the same calendar month, the total number of days that the retiree works in those positions may not exceed the number of days [~~amount of time that the retiree works in both positions may not exceed the amount of time~~] available that month for work on a one-half time basis.

(e) In addition to the service described in subsection (d) of this section, substitute service under this exception may be combined in the same school year with work under the following exceptions without loss of annuity provided the requirements for work under each exception are met:

(1) acute shortage area as described in §31.16 of this chapter (relating to Acute Shortage Area Exception); [~~and~~]

(2) principal or assistant principal as described in §31.17 of this chapter (relating to Principal or Assistant Principal Exception); and[.]

(3) faculty member of a professional nursing program as described in §31.19 of this chapter (relating to Faculty Member of Professional Nursing Program Exception).

(f) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May) [or under §29.21 of this title (relating to Effective Date for Disability Retirement)]).

(g) A retiree who reports for duty as a daily substitute during any day and works any portion of that day shall be considered to have worked one day.

§31.14. One-half Time Employment.

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) Except as provided in subsection (e) of this section, one-half time employment measured in clock hours shall not in any month exceed one-half of the time required for a similar full time position in a calendar month or 92 clock hours, whichever is less. Paid time-off is employment for purposes of this section and reduces the number of hours available to work in the calendar month in which it is taken. Because the time required for a full time position may vary from month to month, determination of one-half time will be made on a calendar month basis. If an employer is scheduled to be closed for business during all or part of a calendar month, the amount of time available for one-half time employment is reduced by the number of business days the employer is closed. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any calendar month one-half the normal load for full-time employment at the same teaching level.

(c) For bus drivers, "one-half time" employment shall in no case exceed 12 days in any calendar month, unless the retiree qualifies for the bus driver exception in §31.18 of this chapter (relating to Bus Driver Exception). Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

(d) This exception and the exception for substitute service may be used during the same school year provided the substitute service and one-half time employment do not occur in the same month. Effective September 1, 2003, this exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed the number of days available for that month for work on a one-half time basis. [amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis.]

(e) Paid time off, including sick leave, vacation leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time available to work in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

[(e) For the 2005-2006 school year only, retirees who retired prior to September 1, 2005 and work in one-half time positions will not forfeit their annuities under this section for working additional hours during the months of September, October, and November 2005 if:]

[(1) the work was as a result of emergency conditions due to Hurricane Rita as declared by the Governor of Texas; and]

[(2) the retiree was working in a health care facility.]

§31.15. Six-Month Exception.

(a) Any person receiving a service retirement annuity, who retired after January 1, 2001, may, without forfeiting payment of the annuity, be employed on as much as full time for no more than six months in a school year if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) The work must occur:

(1) in no more than six months in a school year; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31. Except in cases set forth in §31.18 of this title (relating to Bus Driver Exception), employment in a full-time position during any month in the school year in which the retiree retired results in the forfeiture of annuity for that month without regard to the number of days worked.

(c) A person who retired after January 1, 2001, and who, during a school year, has already used the exception described in §31.13 of this title (relating to Substitute Service) or §31.14 of this title (relating to One-half Time Employment) is eligible for the exception described in this section during the same school year. However, the permissible substitute service, the employment for work at no more than half time during the same school year, and any combination in the same calendar month of substitute service and one-half time employment must be included in the six months of employment allowed under this section. The six-month exception will be allowed so long as the retiree is eligible and is reported under that exception by the employer. A retiree using the six-month exception must use the first six months of a school year in which any work occurs. In the event the retiree wants to use the six-month exception and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the previous TRS 118, Employment of Retired Member(s), report(s).

(d) Except as provided in subsections (h) and (i) of this section, a person who retired after January 1, 2001, and is using the six-month exception, will forfeit an annuity payment for any month in the school year for work in excess of the six-month period. This applies even if the work would otherwise qualify for an exception under §31.13 of this title [(relating to Substitute Service)] for substitute work or for exceptions applicable to one-half time or less employment, employment as a bus driver, employment in an acute shortage area, or employment as a principal or assistant principal.

(e) A retiree may elect to revoke the six-month [six month] exception by submitting the election in writing and returning any ineligible payments.

(f) A retiree employed under the six-month exception who, during the same school year, also works as a substitute or one-half time or less may not be employed in or reported under the substitute or one-half time category during the remaining months of the school year.

(g) Paid time off, including sick leave, vacation leave, and compensatory time for overtime worked, is employment for purposes

of this section and must be reported to TRS as employment for the calendar month in which it is taken.

(h) A [~~Beginning with the 2007-2008 school year,~~ ~~a~~] retiree working under the six-month exception does not forfeit the annuity for June for work performed in June if the work the retiree agreed to complete under the contract or work agreement cannot be completed by May 31 and the retiree does not work beyond June 15 of that year.

(i) For a retiree working under the six-month exception, time spent attending professional development classes or activities [~~on or after June 16, 2007,~~] is not considered work for purposes of this section provided the professional or staff development classes or activities are not included in the employee's total number of required days of work under a contract or work agreement.

§31.18. Bus Driver Exception.

(a) A retiree who retired before September 1, 2005 under Government Code, §824.202(a) without reduction for retirement at an early age and who actually drives each day at least one bus route [~~per day~~] that complies with the guidelines established by the Texas Education Agency (TEA) will be considered eligible for the bus driver exception under Government Code, §824.602(a)(7) and may work as much as full-time on other work.

(b) A retiree who retired on or after September 1, 2005 under Government Code, §824.202(a) without reduction for retirement at an early age who actually drives at least one bus route per day that complies with the guidelines established by the Texas Education Agency (TEA) and whose primary employment is as a bus driver will be considered eligible for the bus driver exception under Government Code, §824.602(a)(7).

(c) For purposes of subsection (b) of this section, employment as a bus driver is considered the retiree's primary employment if the total amount of any other employment is less than one-half time as provided in §31.14 of this title (relating to One-half Time Employment).

(d) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(e) In the event the retiree wants to use the bus driver exception but has not been reported in that manner, the reporting entity must notify TRS in writing by amending the previous TRS 118, Employment of Retired Member, report(s).

§31.19. Faculty Member of Professional Nursing Program Exception.

(a) A retiree [~~Beginning on September 1, 2005, a person~~] who is employed on a full-time basis as a faculty member in an undergraduate or graduate professional nursing program as defined by Education Code, §54.221 is considered eligible for employment after retirement under the exception described in Government Code, §824.602(a)(8). Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) For purposes of the exception described in this section, a faculty member is a retiree employed by an undergraduate or graduate professional nursing program as described in Education Code, §54.221 to serve as a full-time member of its faculty or staff with duties that include teaching, research, administration, or performing other professional services.

(c) A retiree must elect in writing on a form prescribed by TRS to take advantage of the exception described by this section no later than the end of the first month of employment under this section or 30 days after the date of employment, whichever is later.

(d) If the form is not received and the retiree continues to work on a full-time basis for more than six months the annuity payment will be suspended each month work is performed until the election form is received by TRS.

(e) In the event the retiree elects to use the exception described in this section and has not been reported in that manner, the reporting entity must notify TRS in writing by amending the Employment of Retired Member(s) report.

(f) For the exception described in this section, the 12 month separation period described in Government Code, §824.602(a)(8) may be any 12 consecutive months following the month of retirement so long as the retiree is not employed in any position or capacity by a public educational institution during any part of each of the 12 months. Employment by a third party entity is considered employment by a public educational institution covered by TRS for purposes of this subsection.

(g) The exception described in this section expires at the end of the spring semester in 2015.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §§31.31 - 31.34

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.31 - 31.34, concerning employment after disability retirement. The proposed amendments arise from TRS' four-year rule review of Chapter 31, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. In general, a retiree is not entitled to a service or disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third party entity providing personnel to a TRS-covered employer unless the employment meets the requirements for one of the exceptions provided by law to this general rule. Chapter 31 provides TRS-covered employers and retirees with more detailed information and instructions on these exceptions to the general rule than provided in the law. In addition, Chapter 31 establishes the circumstances under which a TRS-covered

employer must pay a surcharge to the pension plan for hiring a retiree to work in a TRS-covered position. Subchapter C of Chapter 31 addresses employment after disability retirement.

Section 31.31 concerns employment resulting in forfeiture of disability retirement. TRS proposes adding a reference in the section to the exception for working as a faculty member of a professional nursing program that was inadvertently left out after the exception was authorized in 2005.

Section 31.32 concerns the exception for one-half time employment up to 90 days. TRS proposes deleting references in the section to effective dates occurring in the past and language that clarifies how much a disability retiree can work when combining one-half time employment and substitute service.

Section 31.33 concerns the exception for substitute service up to 90 days. TRS proposes adding language to the section to clarify that a disability retiree is limited to 90 days of substitute service or 90 days of combined substitute service and one-half time employment.

Section 31.34 concerns the exception for employment up to three months on a one-time only trial basis. TRS proposes adding a subsection to the section to clarify that the trial work period may span two school years. This proposed additional language is consistent with current staff interpretation and administration.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §§31.31 - 31.34 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify rules concerning exceptions to the general rule that a TRS retiree is not entitled to a disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third party entity providing personnel to a TRS-covered employer.

Mr. Guthrie has determined that there will be no foreseeable economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

§31.31. Employment Resulting in Forfeiture of Disability Retirement Annuity.

(a) A person receiving a disability retirement annuity forfeits the annuity payment in any month in which the retiree is employed by a public educational institution covered by TRS, unless the employment falls within one of the exceptions set forth in this subchapter. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) A person receiving a disability retirement annuity may not exercise the exceptions applicable to service retirees in §31.15 of this chapter (relating to Six-Month [~~Six Month~~] Exception); §31.16 of this chapter (relating to Acute Shortage Area Exception); §31.17 of this chapter (relating to Principal or Assistant Principal Exception); [~~and~~] §31.18 of this chapter (relating to Bus Driver Exception); and §31.19 of this chapter (relating to Faculty Member of Professional Nursing Program Exception).

§31.32. Half-time Employment Up to 90 Days.

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as one-half the full time load for the particular position according to the personnel policies of the employer. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003. Total substitute service under §31.33 of this chapter (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute [~~Effective September 1, 2003, substitute~~] service under §31.33 of this chapter and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month do not exceed the number of days available that month [~~per month~~] for work on a one-half time basis. Working any part of a day as a substitute counts as working one day. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May) [~~or under §29.21 of this title (relating to Effective Date for Disability Retirement)~~]).

(b) "One-half time" employment measured in clock hours must never exceed one-half of the time required for the full time position in a calendar month or 92 clock hours, whichever is less, and may not exceed a total of 90 days in a school year. Determination of one-half time will be made on a calendar month basis as the full time load may vary from month to month. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any month one-half the normal load for full-time employment at the same teaching level.

(c) "One-half time" employment for bus drivers shall in no case exceed 12 days in any calendar month. Work by a bus driver for any part of a day shall count as full day for purposes of this section.

§31.33. Substitute Service Up to 90 Days.

(a) A person receiving a disability retirement annuity may work as a substitute in a month without forfeiting the annuity for

that month subject to the same conditions as apply to service retirees except that the total substitute service or combination of substitute service and one-half time employment in the school year may not exceed 90 days. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May) [~~or under §29.21 of this title (relating to Effective Date for Disability Retirement)~~]). Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) Any disability retiree who reports for duty as a substitute during any day and works any portion of that day shall be considered to have worked one day.

§31.34. Employment Up to Three Months on a One-Time Only Trial Basis.

(a) Any person receiving a disability retirement annuity may, without forfeiting payment of the annuity, be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(c) TRS must receive written notice of the retiree's election to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three month trial period.

(d) Working any portion of a month counts as working a full month for purposes of this section.

(e) The three month exception permitted under this section is in addition to the 90 days of work allowed in §31.33 of this chapter (relating to Substitute Service up to 90 Days) or §31.32 of this chapter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

(f) The trial work period may occur in one school year or may occur in more than one school year provided the total amount of time in the trial period does not exceed three months and the months are consecutive.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006056

Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

The Teacher Retirement System of Texas (TRS) proposes amendments to §31.41, concerning the employer pension surcharge on retirees returning to work in a TRS-covered position. The proposed amendments arise from TRS' four-year rule review of Chapter 31, Subchapter D, in Title 34, Part 3, of the Texas Administrative Code. Chapter 31 addresses the opportunities and limitations on employment with a TRS-covered employer after retirement and the limitations on the amount of compensation a disability retiree may receive from any source after retirement without forfeiting the disability retirement benefit. In general, a retiree is not entitled to a service or disability retirement benefit for any month in which the retiree is employed by a TRS-covered employer or a third-party entity providing personnel to a TRS-covered employer unless the employment meets the requirements for one of the exceptions provided by law to this general rule. Chapter 31 provides TRS-covered employers and retirees with more detailed information and instructions on these exceptions to the general rule than provided in the law. In addition, Chapter 31 establishes the circumstances under which a TRS-covered employer must pay a surcharge to the pension plan for hiring a retiree to work in a TRS-covered position. Subchapter D of Chapter 31 addresses that employer pension surcharge.

Section 31.41 concerns the return to work employer pension surcharge. TRS proposes deleting from the section obsolete references to past effective dates and events relating to certain emergency conditions that have been resolved with respect to the employer pension surcharge. Those references are no longer necessary to administer the rule and are potentially confusing.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §31.41 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify rules implementing the statutory pension surcharge on TRS-covered employers that hire retirees returning to work in a TRS-covered position.

Mr. Guthrie has determined that there will be no foreseeable economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect §825.4092 of the Government Code, which requires TRS-covered employers to pay contributions (surcharges) for retirees returning to work in a TRS-covered position on or after September 1, 2005.

§31.41. Return to Work Employer Pension Surcharge.

(a) For each report month a retiree is working in a TRS-covered position and reported on the Employment of Retired Members Report, the employer that reports the retiree shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership, except that a retiree reported as a substitute must meet the requirements of §31.1(b) of this title (relating to Definitions) for the surcharge not to apply. [~~For the 2005-2006 school year only, a retiree who retired before September 1, 2005 and is employed for a period of more than 4 1/2 months due to the enrollment of students displaced by Hurricane Katrina may be considered a temporary employee whose employment is not subject to the surcharge under this section.~~]

(b) The surcharge amount that must be paid by the employer for each retiree working in a TRS-covered position is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(c) The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(d) The [~~For the 2005-2006 and 2006-2007 school years, the surcharge is not owed by the employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005. Beginning with the 2007-2008 school year, the~~] surcharge is not owed by the employer for any retiree employed who retired from the retirement system before September 1, 2005.

(e) The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(f) The surcharge is owed by the employer on any retiree who is working for a third party entity but serving in a TRS-covered position and who is considered an employee of that employer under §824.601(d) of the Government Code.

(g) If a retiree is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment). If the employment is with more than one employer, the surcharge is owed by each employer.

(h) If a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) If a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006057
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §§41.30, 41.33, 41.34, 41.36, 41.38, 41.39, 41.45, 41.50, 41.51

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§41.30, 41.33, 41.34, 41.36, 41.38, 41.39, 41.45, 41.50, and 41.51, concerning the active employee health benefit plan (TRS-ActiveCare). The proposed amendments arise from TRS' four-year rule review of Chapter 41, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 addresses the health benefit programs administered by TRS as trustee of those programs and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter C addresses various aspects of TRS-ActiveCare, including elections to become a participating entity in TRS-ActiveCare, eligibility to enroll in TRS-ActiveCare, enrollment periods, effective dates of coverage, termination dates of coverage, and appeals relating to claims and to eligibility.

Section 41.30 concerns participation in TRS-ActiveCare by school districts, other educational districts, charter schools, and regional education service centers. TRS proposes amending §41.30(f)(2), which addresses an election by an eligible charter school to participate in TRS-ActiveCare. The proposed

amendment clarifies that an eligible charter school electing to participate in TRS-ActiveCare must comply with §41.30(a), regardless of the date upon which the eligible charter school wants to become a participating entity in TRS-ActiveCare.

Section 41.33 concerns definitions applicable to the TRS-ActiveCare program. TRS proposes amending §41.33(1)(B) to clarify that this paragraph applies only to grandchildren. The second proposed amendment to paragraph (1)(B) is needed because the federal income tax year and the TRS-ActiveCare plan year do not coincide. This proposed amendment to paragraph (1)(B) clarifies that, in order for the grandchild to qualify as a dependent under this section during a given portion of the TRS-ActiveCare plan year, the grandchild will need to be separately reported as a dependent of the full-time or part-time employee for federal income tax purposes during the same period of time. For example, in order for a full-time or part-time employee to validly enroll a grandchild as a dependent under paragraph (1)(B) during the period from September 1, 2010 through December 31, 2010, then the full-time or part-time employee must report the grandchild as a dependent for the 2010 tax year. Similarly, in order for the full-time or part-time employee to validly enroll a grandchild as a dependent under this paragraph (1)(B) during the period from January 1, 2011 through September 1, 2011, then the full-time or part-time employee must report the grandchild as a dependent for the 2011 tax year.

Section 41.34 addresses eligibility to be enrolled in TRS-ActiveCare. TRS proposes amending paragraph (3) of the section to replace obsolete terminology. The proposed amendment in §41.34(8) addresses special enrollment provisions under TRS-ActiveCare. As permitted by federal law, TRS-ActiveCare has annually elected to exempt itself from the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996, commonly referred to as HIPAA. This annual election has allowed TRS-ActiveCare to define its own special enrollment provisions, many of which have been in place since the beginning of the program. These TRS-ActiveCare special enrollment provisions have historically been described not only in TRS-ActiveCare plan documents (e.g., the annual Benefits Booklets), but also in certain TRS-ActiveCare rules (e.g., TRS rules 34 TAC §41.34(8) and §41.39(a)(1)). Unfortunately, legislative changes made by the federal government to HIPAA, as well as changes made by TRS-ActiveCare itself, raise the possibility of inconsistencies between the TRS-ActiveCare special enrollment provisions described in TRS-ActiveCare documents and those described in the TRS-ActiveCare rules. Consequently, to avoid inconsistencies, TRS is proposing that specific references to HIPAA be removed from the TRS-ActiveCare rules. Appropriate notice of TRS-ActiveCare special enrollment provisions will continue to be provided to enrollees via the Benefits Booklets and other types of notices.

Section 41.36 concerns enrollment periods for TRS-ActiveCare. TRS proposes amending §41.36(d) in conformity with the substance and rationale for the proposed amendment to §41.34(8), as explained immediately above in this preamble.

Section 41.38 concerns the termination date of coverage under the TRS-ActiveCare program. TRS proposes adding a new paragraph (7) in §41.38(a) and renumbering the remaining paragraphs accordingly. This proposed amendment addresses the termination date of a covered individual who voluntarily drops coverage under TRS-ActiveCare. The termination will become effective at the end of the month in which TRS-ActiveCare receives notice that the individual has chosen to voluntarily drop coverage. This timing is consistent with the other provisions of §41.38(a).

Section 41.39 addresses TRS-ActiveCare coverage for individuals changing employers during the plan year. TRS proposes amending §41.39(a)(1) in conformity with the substance and rationale for the proposed amendment to §41.34(8), as explained above in this preamble.

Section 41.45 concerns required information from large school districts. The proposed amendment to §41.45(a) establishes a more generous timeframe within which a large school district must submit the information required by this subsection.

Section 41.50 addresses appeals relating to claims. Currently, an individual who wants to appeal a denied payment of a claim or other benefit initially goes through an appeal process conducted by the administering firm for TRS-ActiveCare. For instance, Blue Cross and Blue Shield of Texas (BCBSTX), the current health plan administrator for TRS-ActiveCare, conducts the initial appeal process for medical claims. Once the individual has exhausted the appeal process conducted by the administering firm, the individual can file an appeal with TRS. The proposed amendments to subsections (b) and (p) of §41.50 contemplate the shifting of the entire claims appeal process to the administering firm. The implementation date of that shift would be September 1, 2011, for a claim or other benefit with all dates of service or all denials for services occurring on or after that date.

TRS proposes the amendments to §41.50 in anticipation of the implementation of recently enacted federal health care legislation. The Patient Protection and Affordable Care Act, signed into law on March 23, 2010, along with the Health Care and Education Affordability Reconciliation Act of 2010, signed into law on March 30, 2010, embody the sweeping federal health care legislation enacted this year. It is anticipated that the appeals and external review rules of the new federal health laws, hereinafter referred to jointly as the "PPACA," will become applicable to TRS-Active Care on September 1, 2011, the beginning of the next TRS-ActiveCare plan year. The PPACA contains a number of new benefit appeal requirements that are applicable to health plans. Also, for the first time, TRS-ActiveCare will be required to provide external reviews for benefit denials and will be required to comply with existing U.S. Department of Labor claims rules that heretofore have not applied to public health benefit plans, like TRS-ActiveCare, that are not subject to the Employee Retirement Income Security Act (ERISA). TRS-ActiveCare would incur additional costs if the program were to deploy its internal staff and resources in administering these imminent requirements for benefit appeals. Therefore, these costs can be avoided by shifting to BCBSTX and the current pharmacy benefit manager for TRS-ActiveCare, Medco Health ("Medco"), the entire benefits appeal processes, including the handling of external reviews. For its ERISA clients, BCBSTX and Medco already have established appeal processes that meet the existing Department of Labor claims rules and are adjusting those appeal processes to meet the new requirements under the PPACA. Subject to the adoption of these proposed amendments to §41.50 by the TRS Board of Trustees (board), BCBSTX and Medco have agreed to undertake the entire appeal process mandated by the PPACA at no additional charge to TRS-ActiveCare, beginning with medical and pharmacy claims or other benefits with dates of service or denials for services that occur on or after September 1, 2011. Further, the proposed amendments to §41.50 entail no additional cost to TRS-ActiveCare enrollees who may appeal the denial of a claim or benefit under the proposed process. Initial

eligibility appeals will continue to be handled by TRS pursuant to rule 34 TAC §41.51, which establishes the TRS appeal process for denials of eligibility to enroll in TRS-ActiveCare. Such appeals are not subject to the new appeals and external review rules of the PPACA.

To reflect the system's current organizational chart, TRS proposes additional proposed amendments to both §41.50 and §41.51 that update the designation and succession of TRS executive positions authorized to appoint members to the respective claims and eligibility appeals committees under those sections. The proposed amendments designate the Chief Financial Officer to make such appointments if the primary designated position, the Deputy Director, is vacant. Under the proposed amendments, the Chief Financial Officer replaces the Chief Operating Officer, a position which has been discontinued.

Brian Guthrie, TRS Deputy Director, estimates that, for each year of the first five years that the proposed rules will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed rules.

For each year of the first five years that the proposed rules will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify and update provisions concerning the administration of TRS-ActiveCare and to establish a fair and efficient administrative appeal process for medical and pharmacy claims that complies with federal health care legislation.

Mr. Guthrie has determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §1579.052, which authorizes the board, as trustee of the TRS-ActiveCare health benefits program, to adopt rules relating to the program as necessary and to adopt rules to administer the program, including rules relating to the adjudication of claims and expelling participants from the program for cause.

Cross-Reference to Statute: The proposed amendments affect Chapter 1579 of the Insurance Code, which provides for the establishment and administration of TRS-Care.

§41.30. Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers.

(a) - (e) (No change.)

(f) Charter schools. Pursuant to §1579.154, Insurance Code, an open-enrollment charter school established under Chapter 12, Subchapter D, Education Code, ("charter school") may elect to participate in TRS-ActiveCare by complying with both paragraphs (1) and (2) of this subsection. Only an eligible charter school under the Act may elect to participate.

(1) Pursuant to §1579.154(a), Insurance Code, to be eligible, a charter school must agree to inspection of all records of the school relating to its participation in TRS-ActiveCare by TRS, by the administering firm as defined in §1579.002(1), Insurance Code, by the commissioner of education, or by a designee of any of those entities, and further must agree to have its accounts relating to participation in TRS-ActiveCare annually audited by a certified public accountant at the school's expense. The agreement of the charter school shall be evidenced in writing and shall constitute a part of a notice of election prescribed by TRS pursuant to subsection (a) of this section.

(2) Eligible charter schools may elect to participate in TRS-ActiveCare by filing a notice of election in compliance with subsection (a) of this section, in which event: [~~the charter school will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the charter school in its notice of election. Alternatively, the eligible charter school will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section.~~]

(A) the charter school will become a participating entity on the later of the first day of the month following six (6) months from the date on which TRS receives the notice of election or a preferred date specified by the charter school in its notice of election; or

(B) alternatively, the eligible charter school will become a participating entity effective on the date approved by the Executive Director, if applicable, as described in subsection (i) of this section.

(g) - (i) (No change.)

§41.33. Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program.

The following words and terms when used in this subchapter [~~C~~] or in connection with the administration of Chapter 1579, Insurance Code, shall have the following meanings unless the context clearly indicates otherwise.

(1) Dependent--Only those individuals described by [~~Chapter~~] §1579.004, Insurance Code, and an unmarried individual under 25 years of age ("child") who is described by any one of the following subparagraphs at all times during which the child is receiving coverage under TRS-ActiveCare.

(A) (No change.)

(B) A full-time or part-time employee's grandchild whose primary residence is the household of that full-time or part-time employee if the grandchild [~~child~~] is a dependent of the full-time or part-time employee for federal income tax purposes for the reporting year in which coverage of the grandchild is in effect; or

(C) - (D) (No change.)

(2) - (9) (No change.)

§41.34. Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program.

The following persons are eligible to be enrolled in TRS-ActiveCare under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1579, Insurance Code:

(1) - (2) (No change.)

(3) Dependents, as defined in §41.33 of this title pursuant to §1579.004, Insurance Code. A child defined in §1579.004(3), Insurance Code, who is 25 years of age or older, is eligible for coverage

only if, and only for so long as, such child's mental disability [~~retardation~~] or physical incapacity is a medically determinable condition that prevents the child from engaging in self-sustaining employment as determined by TRS.

(4) - (7) (No change.)

(8) Individuals [~~Except as provided in the exceptions found in subparagraphs (A) - (C) of this paragraph, individuals~~] who become eligible for coverage under the special enrollment provisions of TRS-ActiveCare [~~the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996))~~].

[~~(A) In no event may an individual who is already enrolled in TRS-ActiveCare elect a different plan, for himself or any eligible dependents, for the remainder of the existing plan year but may only add eligible dependents for coverage under the individual's existing plan selection upon the occurrence of a special enrollment event.~~]

[~~(B) In no event may an eligible employee enroll in TRS-ActiveCare as a result of a special enrollment event applicable to his dependent.~~]

[~~(C) In no event, as a result of a special enrollment event applicable to the dependent, may the dependent of an eligible employee enroll in TRS-ActiveCare if the eligible employee is not enrolled in TRS-ActiveCare.~~]

(9) (No change.)

§41.36. Enrollment Periods for TRS-ActiveCare.

(a) - (c) (No change.)

(d) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment provision of TRS-ActiveCare [~~event~~], as described in §41.34(8) of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program), shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare within this 31-day period.

(e) - (h) (No change.)

§41.38. Termination Date of Coverage.

(a) Unless otherwise required by law or this section, coverage shall terminate at the earliest of:

(1) - (6) (No change.)

(7) 11:59 p.m. Austin Time on the last calendar day of the month in which the administering firm or TRS receives notice, in a form acceptable to TRS, that a covered individual, or the individual under whom a dependent qualified for coverage, has chosen to voluntarily drop coverage under TRS-ActiveCare;

(8) [~~(7)~~]11:59 p.m. Austin Time on the last day of the month for which TRS-ActiveCare received payment if the participating entity employing the covered individual, or the individual under whom a dependent qualified for coverage, has failed to make all premium payments due for a period of 90 days or longer; or

(9) [~~(8)~~] the termination date and time that a health maintenance organization participating in TRS-ActiveCare provides for in its Evidence of Coverage for the reasons listed in that Evidence of Coverage.

(b) - (c) (No change.)

§41.39. Coverage for Individuals Changing Employers.

(a) A full-time or part-time employee enrolled in TRS-ActiveCare who changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under special enrollment provisions of TRS-ActiveCare [~~the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996))~~];

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open-enrollment conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(b) - (c) (No change.)

§41.45. Required Information from School Districts with More than 1,000 Employees.

(a) No later than 30 calendar days after [~~When~~] a large school district, as defined in subsection (b) of this section, submits its notice of election to become a participating entity in TRS-ActiveCare [~~or within 15 calendar days after receiving notice from TRS staff~~], the large school district must submit to TRS the information listed in the following paragraphs for each medical and prescription drug plan that the large school district offered to its employees during the designated time period. Large school districts must include this information for the year to date for the plan year in which the large school district submits its notice of election (current year) and for the two complete plan years immediately preceding the current year. The required information is:

(1) Plan type (PPO, POS, HMO, etc.), including the effective date of each plan;

(2) Average number of employees participating in each plan;

(3) Average number of covered lives in each plan;

(4) Description of all medical and prescription drug benefits, including effective dates of any changes in each plan;

(5) Total premium rates by family tier for each insured plan, including effective dates of any changes;

(6) Total COBRA rates by family tier for each self-funded plan, including effective dates of any changes;

(7) Required employee contribution rates by family tier for each plan, including effective dates of any changes;

(8) Funding arrangement (fully insured, self-funded, etc.) for each plan;

(9) Total premiums paid by year for each plan, if insured; and

(10) Total claims paid by year for each plan.

(b) - (f) (No change.)

§41.50. Appeals Relating to Claims.

(a) (No change.)

(b) For a claim or other benefit with any date of service or denial for service that occurs before September 1, 2011, a [~~A~~] Claimant

may appeal the final denial of the [a] claim or other benefit by the administering firm to the Teacher Retirement System of Texas (TRS), acting in its capacity as trustee of TRS-ActiveCare.

(c) - (d) (No change.)

(e) The TRS Appeal Committee ("Committee") is responsible for review and determination of appeals made pursuant to subsection (b) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial [Operating] Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial [Operating] Officer.

(f) - (o) (No change.)

(p) For a claim or other benefit with all dates of service or all denials for services that occur on or after September 1, 2011, the final decision by the administering firm or by an external review organization, whichever occurs later, shall be the final decision on the appeal.

§41.51. Appeals Relating to Eligibility.

(a) - (c) (No change.)

(d) The TRS Appeal Committee ("Committee") is responsible for the review and determination of appeals made pursuant to subsection (a) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial [Operating] Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial [Operating] Officer.

(e) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006058
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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CHAPTER 43. CONTESTED CASES

34 TAC §§43.1, 43.3 - 43.6, 43.9, 43.10, 43.12, 43.16, 43.37, 43.44, 43.45

The Teacher Retirement System of Texas (TRS) proposes amendments to §§43.1, 43.3, 43.4, 43.5, 43.6, 43.9, 43.10, 43.12, 43.16, 43.37, 43.44, and 43.45, concerning contested cases relating to the TRS pension plan. The proposed amendments arise from TRS' four-year rule review of Chapter 43 in Title 34, Part 3, of the Texas Administrative Code. Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. A contested case is a proceeding in which a person adversely affected by a TRS administrative decision (a "petitioner") is given the opportunity for an adjudicative hearing. An adjudicative hearing is a trial-like proceeding for which the petitioner has been given proper notice and during which TRS and the petitioner may present evidence and argue their positions. The State Office of Administrative Hearings (SOAH) may conduct TRS' adjudicative hearings pursuant to the Texas Administrative Procedure Act (Chapter 2001 of the Texas Government Code), SOAH's procedural rules, and TRS' rules in Chapter 43. The proposed amendments to 11 of the rules in that chapter are intended to improve administrative efficiency, to reflect existing policies and processes in formal rules, and to provide clearer guidance and notice to affected individuals.

One set of significant proposed amendments involves §43.1(b), concerning the steps in the administrative decision and appeal process, and §43.3(3) and (7), concerning respectively the definitions under Chapter 43 of an "appeal" and a "final administrative decision." By these amendments, TRS proposes to include its deputy director in the administrative decision and appeal process. The proposed changes reflect TRS' organizational structure. (The proposed amendments do not affect appeals of final Medical Board decisions on disability retirements: those appeals are made directly to the TRS Board of Trustees (board).) Under current rules, a person adversely affected by a decision of a department manager may ask the chief officer of the manager's division to grant the person's request. The determination by the chief officer of the division is considered the final written administrative decision (as opposed to the final decision of TRS, which is made by the executive director or the board and cannot be appealed further within TRS). The person may appeal the final written administrative decision of the chief officer by filing a petition with the executive director. The executive director may docket the appeal as a contested case with SOAH, which assigns an Administrative Law Judge (ALJ) to the case. The ALJ conducts an adjudicative, or evidentiary, hearing pursuant to the Administrative Procedure Act (APA) and the procedural rules of SOAH and TRS, including Chapter 43 of TRS' rules. At the conclusion of the SOAH proceedings, the ALJ issues a proposal for decision (PFD) to the executive director, who reviews and issues an order adopting, rejecting, or modifying the ALJ's recommendation and findings of fact and conclusions of law. A party may appeal the executive director's order to the Board of Trustees.

The proposed changes to §§43.1(b), 43.3(3) and 43.3(7) require a person whose request has been denied by the chief division officer to make the request to the deputy director before appealing any further denial to the executive director. Because the chief division officer involved - either the chief benefit officer or the chief financial officer - reports to the deputy director, it is appropriate for the deputy director to make the final administrative decision. A person adversely affected by the deputy director's decision could then appeal to the executive director, as described above.

Another set of significant proposed amendments involves the following rules: §43.3(3) and §43.3(5), concerning the definitions of "appeal" and "contested case"; 43.4, concerning decisions subject to review by an adjudicative hearing; 43.5, concerning a request for an adjudicative hearing; 43.9(a), (b), concerning docketing an appeal for adjudicative hearing before SOAH; and 43.10, concerning TRS' authority to grant relief. The proposed amendments clarify and elucidate when an appeal of an administrative decision and the docketing of that appeal with SOAH is appropriate. This proposal clarifies and elucidates the current rules providing that a particular matter may not be the proper subject of an administrative appeal before TRS and a contested case proceeding before SOAH. A contested case is an administrative proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing. Tex. Gov't Code Ann. §2001.003(1); 34 TAC §43.3(5); 1 TAC §155.5(9). Not every request a person

makes to TRS regarding the pension plan involves a legal right or privilege of the requester or a legal duty of the system that would entitle the person to an adjudicative hearing before SOAH. Not every request is appropriate for a contested case hearing under APA procedures. Absent express statutory authority, the APA does not independently provide a right to a contested case hearing. *Foster v. Teacher Retirement System,* 273 S.W.3d 883, 887 (Tex. App.-Austin 2008, no pet.). The system's enabling act authorizes but does not require the TRS executive director to refer an appeal to SOAH for a hearing. Tex. Gov't Code Ann. §825.115(c) (that statute prevails over any other law to the extent of any conflict). Further, it is well established that procedural due process does not protect the mere expectation of a property interest. *Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). "(T)o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it." *Id.*

In some cases, TRS does not have the authority to grant a person's request and doing so would be inconsistent with the terms of the pension plan. In such cases, the petitioner, TRS staff and management, SOAH, the board, and possibly others awaiting the outcome of the futile appeal have expended time, effort, and resources to no avail in the end. For that reason, staff recommends adding language to the rules clarifying that the administrative appeal and contested case proceedings are not intended to address matters for which TRS lacks jurisdiction or authority to grant the relief sought or granting the relief would conflict with the terms of the pension plan.

Section-by-section explanations of all the proposed amendments to rules in Chapter 43, including other proposed changes not explained above, are set out below.

Section 43.1 concerns the administrative review of individual requests. As already explained above, TRS proposes including the deputy director in the administrative appeal process and having him or her make the final administrative decision, which could be appealed to the executive director.

Section 43.3 concerns definitions relating to the administrative review, appeal, and decision process under Chapter 43. Proposed changes to this section include those described above for adding the deputy director to the appeal process in paragraph (7) and clarifying the standards for a valid appeal in paragraphs (3) and (5). In addition to minor clarifying changes, TRS proposes further specifying when another person may be joined as a third party petitioner or respondent by adding language to say that such a person does not have to have actively opposed or supported the petition to be joined. Rather, in joining the party, TRS may determine whether the person's interests are "aligned" with those of the petitioner or respondent.

Section 43.4 concerns decisions subject to review by an adjudicative hearing. The proposed changes to this section clarify the standards for a valid appeal, as explained above.

Section 43.5 concerns requests for adjudicative hearings. The proposed changes to this section clarify the standards for a valid appeal, as explained above.

Section 43.6 concerns filing of documents. The proposed changes to this section reflect current practice in determining whether a document relating to an administrative appeal before the executive director or Board has been properly and timely filed. This proposed change does not affect the acceptable methods or timeliness of providing SOAH or TRS other types of documents, such as the requests for relief submitted to the TRS department manager, chief division officer, or deputy director under §43.1. The first proposed change specifies acceptable methods of sending TRS documents relating to an appeal before the executive director or Board (i.e., personal delivery, overnight mail, regular fax, or United States mail). Emailed or electronically filed documents (other than regular fax) are not accepted. The second proposed change clarifies that TRS applies the "mail box rule" under the rules of civil procedure to the receipt of documents involving an appeal to the executive director or Board. That means that a document filed with TRS via United States mail is considered filed on the date of mailing as long it is received no later than 10 calendar days after the due date and the sender provides adequate proof of mailing.

Section 43.9 concerns the docketing of an appeal for adjudicative hearing and dismissal for failure to obtain setting. The proposed changes to this section clarify the standards for a valid appeal, as described above. Under §43.9(b), the executive director's decision not to docket an appeal with SOAH would be the final decision of TRS and could not be appealed to the board. Under current TRS rule §43.46, which is not proposed for amendment, a party adversely affected by the executive director's decision not to docket an appeal may file a motion for rehearing by executive director. If the executive director denies the motion for rehearing, the aggrieved party may seek judicial review of TRS' final administrative decision as allowed by law.

Section 43.10 concerns the authority of the executive director or, in the matter of a disability retirement certification, the Medical Board to grant the petitioner's request before an appeal is referred to SOAH or while it is still pending before the ALJ or other hearing official. The proposed changes to this section clarify the standards for a valid appeal, as described above.

Section 43.12 concerns the form of petitions and other pleadings. The proposed changes to subsection (d) of this section allow a petitioner to provide other sufficient identifying information in lieu of a Social Security Number when the latter is otherwise required. The proposed change to §43.12(g) specifies acceptable methods of sending TRS documents relating to an appeal before the executive director or board.

Section 43.16 concerns notice of hearing and other action. The proposed change to 43.16(a) reiterates the applicability of the mail box rule as proposed in amended §43.6 and explained above. The proposed change to §43.16(b)(5) reflects current administrative law and procedure regarding the consequences for failure to appear at a scheduled hearing, including dismissal, in accordance with the related SOAH rule on default proceedings, 1 TAC §155.501(b).

Section 43.37 concerns the recording of a hearing and use of a certified language interpreter. The proposed change to this section updates the citation to a SOAH rule.

Section 43.44 concerns discovery in a contested case. The proposed change updates the citation to a related SOAH rule.

Section 43.45 concerns the proposals for decision (PFD) by the ALJ, parties' exceptions to the PFD, and appeals to the board. The proposed changes to §43.45(i) elucidate the board's discretion in deciding whether to hear oral argument in a case. Those proposed changes also provide that, in exercising its discretion, the board may consider the privacy interests of a TRS participant who is not a party to the case but whose confidential information may be involved, like a designated beneficiary whose status as such TRS has upheld throughout the appeal process to this point and has not been joined as a party.

Brian Guthrie, TRS Deputy Director, estimates that, for each year of the first five years that the proposed rules will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules. The proposed amendments reflect the organizational structure of TRS by including the deputy director in the administrative appeal process; clarify and elucidate TRS' standards for determining whether a matter is appropriate for a contested case hearing; and update contested case procedures.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify, elucidate, and update provisions relating to contested cases.

Mr. Guthrie has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under the following statutes: §825.102 of the Government Code, which authorizes the board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board; and §825.115(b) of the Government Code, which authorizes the board to adopt rules for the implementation of that statutory provision relating to the authority of the board to make a final decision in a contested case.

Cross-Reference to Statute: The proposed amendments affect the following sections or chapters of the Government Code: §825.101, concerning the general administration of the system; §825.115, concerning the applicability of the APA to TRS; §825.202, concerning the TRS executive director; §825.204, concerning the TRS Medical Board; §825.506, concerning TRS' benefit plan qualification; §825.507, concerning the confidentiality of TRS participant records; Chapter 2001, the APA; and Chapter 2003 of the Government Code, concerning SOAH.

§43.1. Administrative Review of Individual Requests.

(a) (No change.)

(b) Final administrative decision by deputy director [~~chief officer~~]. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may make a request to the appropriate manager within the department, [~~and~~] then to the chief officer of the division, and then to the deputy director. The deputy director [~~chief officer~~] shall mail a final written administrative decision, which shall include a statement that the person may appeal the decision to the executive director and the deadline for doing so. A person adversely affected by a decision of the deputy director [~~a chief officer~~] may appeal the decision to the executive director of TRS as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The executive director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this [~~the~~] chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(c) - (d) (No change.)

§43.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Adjudicative hearing--An evidentiary hearing in a contested case, as provided by Government Code, §2001.051 and paragraph (5) of this section.

(2) (No change.)

(3) Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by the deputy director [~~a chief officer~~] or the Medical Board on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(4) (No change.)

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(6) (No change.)

(7) Final administrative decision--An action, determination, or decision by the deputy director [~~a chief officer~~] or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).

(8) - (17) (No change.)

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.

(19) - (21) (No change.)

§43.4. Decisions Subject to Review by an Adjudicative Hearing.

A person adversely affected by a final administrative decision of TRS relating to the pension plan on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan may appeal the decision and request an adjudicative hearing with regard to the following:

(1) - (8) (No change.)

§43.5. Request for Adjudicative Hearing.

On a matter over which TRS has jurisdiction and authority to grant relief that does not conflict with the terms of the pension plan, a party may appeal a final administrative decision by filing a petition for adjudicative hearing with the executive director no later than 45 days after the date the final administrative decision is mailed. The petition shall conform to the requirements of §43.12 of this chapter (relating to Form of Petitions and Other Pleadings).

§43.6. Filing of Documents.

All documents relating to any appeal pending or to be instituted before the executive director or the board shall be filed with the executive director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. A document may be filed with TRS by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail.

A document is deemed filed when mailed if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. If the executive director has docketed an appeal and referred it for an adjudicative hearing, documents shall be filed with the administrative law judge and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge.

§43.9. Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting.

(a) On an appeal over which TRS has jurisdiction, [~~and~~] authority to grant relief, in which the relief requested is consistent with the terms of the plan, and that otherwise complies with this chapter, the executive director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and refer the matter for an adjudicative hearing before the State Office of Administrative Hearings or otherwise as authorized by law.

(b) The executive director may decline to docket an appeal over which TRS has no jurisdiction or no authority to grant relief, that seeks relief that is inconsistent with the terms of the pension plan, that is not timely filed, or that otherwise fails to comply with this chapter. The executive director may also decline to docket a matter for which a contested case hearing is not required by law or for which other available procedures are more appropriate. The executive director's decision declining to docket an appeal is the final decision of TRS when the circumstances described in §2001.144, Government Code, are met. A person may not appeal such decision to the board.

(c) - (e) (No change.)

§43.10. Authority to Grant Relief.

At any time before an appeal is referred for adjudicative hearing, the executive director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interest of other individual parties are not adversely affected and the relief does not conflict with the terms of the pension plan. If a matter has been referred to SOAH, the SOAH administrative law judge may dismiss the case from the SOAH docket in accordance with SOAH rules. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the dismissal of the case.

§43.12. Form of Petitions and Other Pleadings.

(a) - (c) (No change.)

(d) The original petition for an adjudicative hearing should also include the name, address, and telephone number of petitioner and the name, address, telephone number and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. In lieu of the tax number, the petition may include other information sufficient to identify the member or beneficiary whose interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address and telephone number. If such information is not provided on the original petition, the executive director, board of trustees, or administrative law judge may require submission of such information before proceeding with the hearing.

(e) - (f) (No change.)

(g) Written pleadings other than the original petition may be served by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail [~~should be served by mail or personal delivery~~] upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service may be made upon a party by serving the attorney of record. The following form of certification will be sufficient: "I hereby certify that I have this _____ day of _____, 20__, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) (No change.)

§43.16. Notice of Hearing and Other Action.

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by SOAH, TRS, or an administrative law judge, as applicable, shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. Service may also be accomplished by electronic mail or facsimile transmission if all parties agree. In that case, the sender shall retain the original of the document and file it upon request with the administrative law judge or the executive director, as applicable. Upon request, the sender has the burden of proving the date and time of receipt of the document served by facsimile transmission or electronic mail. Electronic mail may not be used with documents produced pursuant to a discovery request. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial hearing notices shall include the following:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; [~~and~~]

(4) a short, plain statement of the matters asserted. If TRS or a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten days before the date set for hearing, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; and[~~.~~]

(5) a statement that failure to appear at the prehearing conference or any scheduled hearing may result in the following: the facts alleged by TRS may be admitted as true; the relief requested by TRS may be granted; petitioner's appeal may be denied; or petitioner's appeal may be dismissed with prejudice for failure to prosecute the claim; or any or all of the foregoing actions.

(c) - (d) (No change.)

§43.37. Recording of the Hearing; Certified Language Interpreter.

(a) A record of a hearing or prehearing conference shall be made in a manner consistent with the purpose of 1 TAC §155.423 [~~§155.43~~]. Because of the nature of TRS proceedings and the expense of stenographic recordings and transcripts, it is the policy of TRS to rely on an audio or video recording as the official record of the proceeding, regardless of the anticipated length of the hearing.

(b) - (e) (No change.)

§43.44. Discovery.

Parties may obtain discovery under 1 TAC §155.251 [~~§155.31~~] if the matter is before SOAH or under the rules of this chapter if the matter

was referred for an adjudicative hearing to a hearing official not affiliated with SOAH.

§43.45. Proposals for Decision, Exceptions, and Appeals to the Board of Trustees.

(a) - (h) (No change.)

(i) An appeal to the Board of Trustees shall be considered in open meeting to the extent required by law. A party who appeals to the Board of Trustees consents to the public discussion of all relevant facts, including information in the member's file that may otherwise be confidential by law. The board in its sole discretion may determine whether to hear oral argument on an appeal. In making that determination, the board may consider if confidential information of a TRS participant who is not a party to the appeal may be disclosed during oral argument.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006059
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.2, 53.15, 53.16, 53.19

The Teacher Retirement System of Texas (TRS) proposes amendments to §§53.2, 53.15, 53.16, and 53.19, concerning certification by companies offering qualified investment products. The proposed amendments to §§53.2, 53.15, and 53.16 arise from recent amendments to §9(a) of art. 6228a-5, Revised Civil Statutes. The amendments to §53.19 arise from reorganization of TRS. Chapter 53 addresses certification by companies that offer qualified investment products to employees of educational institutions who participate in their employers' 403(b) retirement savings plans. Generally, a company must certify to TRS that it complies with the requirements of art. 6228a-5 and Chapter 53 before offering investment products to employees through salary reduction agreements. State law defines an "eligible" qualified investment product as one offered by a company that is certified to the TRS Board of Trustees under the provisions of art. 6228a-5 or eligible to certify under applicable provisions. Under recent amendments to §9 of art. 6228a-5, an educational institution may not enter into or continue a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an *eligible* qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked without first providing the employee notice in writing that, first, indicates the reason the product is no longer an eligible qualified investment or why certification has been denied, suspended, or revoked, and, second, clearly states that by signing the notice the employee is agreeing to enter into or continue the salary reduction agreement. The provision addressing written notice was added by recent amendments to art. 6228a-5 by House Bill 3480, §4, 81st Legislature, Regular Session (2009).

The statutory amendment providing for written notice appears to permit an educational institution to enter into a salary reduction agreement with an employee concerning a qualified investment product offered by a company that is not certified. TRS does not have rulemaking authority with respect to §9 of art. 6228a-5. Therefore, TRS does not propose amendments to interpret or administer the effect of the statutory amendment to §9 of art. 6228a-5 concerning written notice to employees. However, TRS notes that other provisions of art. 6228a-5 requiring company certification and product registration were not amended to relieve companies of these requirements merely by substituting written notice to an employee. For example, under §10(a) of art. 6228a-5, a person commits an offense if the person sells or offers for sale an investment product that is not an *eligible* qualified investment product or that *is not registered* with TRS. Company certification is a prerequisite to product registration. Additionally, §11 of the statute requires uniform written notice when an annuity contract is offered; the notice must state that the company offering the annuity must comply with Section 5 (certification requirement) and the annuity must be a qualified investment product *registered* under §8A.

In light of these statutory provisions that were not amended, §9(a)(8) may not have been intended to excuse a company from certification and product registration merely by having the employer give written notice to employees that a product offering is not from a certified company. Instead, the amending language may have been intended to provide a limited exception for an employer to enter into or continue a salary reduction agreement *for an ongoing product purchase* when the company offering the product no longer has certified status. The amendment does not expressly address issues such as the following: First, Whether a company that was never certified, including a company that never applied for certification, may offer a product or receive contributions for a product that will be the subject of a salary reduction agreement if the employer provides written notice to the employee; Second, Whether a company whose certification expired but that did not reapply for certification may offer a product or receive contributions for a product that will be the subject of a salary reduction agreement if the employer provides written notice to the employee; and, Third, Whether a certified company may offer a product that is not registered (including a product that was never registered) if the employer provides written notice to the employee.

TRS will continue to accept company certifications and product registrations when applicable requirements are met. Several statutory provisions establishing the requirement for companies to certify and to register their products remain unchanged. However, TRS proposes to amend its rules as described below to acknowledge the amendment to §9(a)(8).

Section 53.2 concerns the applicability of the requirements of Chapter 53. Currently, this section requires a company to certify its qualifications prior to offering, issuing, or entering into a contract for a qualified investment product that is likely to be the subject of a salary reduction agreement. TRS proposes an amendment to refer to the recent amendment to §9(a) of art. 6228a-5 addressing written notice to an employee.

Section 53.15 addresses the product registration requirement. Currently, this section requires registration of a qualified invest-

ment product that is offered to an employee and that is, or is intended to be, the subject of a salary reduction agreement. Certification of a company is a prerequisite to product registration. TRS proposes changes to refer to the recent amendment to §9(a) of art. 6228a-5 addressing written notice to an employee.

Section 53.16 addresses the procedure for product registration, including procedures for suspension or termination of product registration. Currently, this section provides that upon suspension or termination of product registration, a company shall not receive additional contributions for the qualified investment product. TRS proposes changes to refer to the recent amendment to §9(a) of art. 6228a-5 addressing written notice to an employee.

Section 53.19 addresses proceedings to suspend or revoke certification or registration. This section currently refers to the position of "chief operating officer." However, due to recent reorganization of TRS staff, TRS does not currently use that position title. TRS proposes changes to delete references to that position title. TRS also proposes a minor wording change for clarification.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that proposed §§53.2, 53.15, 53.16, and 53.19 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules. The proposed amendments reflect statutory changes and the current organizational structure of TRS.

For each year of the first five years that the proposed amended and new rules will be in effect, Mr. Guthrie has determined that the public benefit will be to coordinate TRS certification and registration requirements with the recent statutory amendments and to remove obsolete staff title references.

Mr. Guthrie has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under the following statutes: §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the system and the transaction of business of the board; and §6(c) of art. 6228a-5 of the Revised Civil Statutes, which authorizes TRS to adopt rules to administer the specified provisions of art. 6228a-5.

Cross-Reference to Statute: The proposed amendments affect art. 6228a-5 of the Revised Civil Statutes, relating to company certification and product registration.

§53.2. Applicability.

(a) This chapter applies to companies that offer qualified investment products to employees of educational institutions in the State of Texas if such products are, or are likely to be, the subject of salary reduction agreements.

(b) A company that, on or after June 1, 2002, offers, issues, or enters into a contract for a qualified investment product that is, or is likely to be, the subject of a salary reduction agreement shall certify to TRS prior to offering, issuing, or entering into a contract for the product, unless excepted under §9(a)(8), Article 6228a-5, Texas Revised Civil Statutes. For purposes of this chapter, offering, issuing, or entering into a contract for a qualified investment product includes offering enrollment in, or enrolling an employee in, a group annuity contract through issuance of an annuity certificate.

(c) A company that entered into a contract with an employee before June 1, 2002, is not subject to the certification requirements established by this chapter with respect to that contract, but the company is subject to the certification requirements established by this chapter with respect to any contracts or qualified investment products offered to, or entered into with, an employee on or after June 1, 2002.

(d) If a company has entered into a contract with an employee before June 1, 2002, the company or employee may demonstrate in a manner acceptable to an educational institution that the provisions of this chapter do not apply to the contract in order for the company to receive contributions to, or payments for purchase of, the qualified investment product described in the contract through a salary reduction agreement between the educational institution and the employee.

§53.15. Product Registration Requirement.

(a) A company required to register its qualified investment products under art. 6228a-5, V.T.C.S., shall submit an application to register products and a registration fee to the retirement system in accordance with this chapter.

(b) A qualified investment product that is offered to an employee on or after January 1, 2008, and that is, or is intended to be, the subject of a salary reduction agreement is required to be registered under this chapter unless excepted under §9(a)(8), Article 6228a-5, Texas Revised Civil Statutes.

(c) A product that is the subject of a salary reduction agreement that is signed before January 1, 2008, is not required to be registered with respect to that salary reduction agreement. If a salary reduction agreement was signed before January 1, 2008, but only the amount of the contribution is changed by agreement of the employee and employer on or after January 1, 2008, the product that is the subject of the salary reduction agreement is not required to be registered with respect to that salary reduction agreement. A company or employee may demonstrate to the educational institution, in a manner deemed acceptable by the institution, that product registration is not required in order for the company to receive contributions to, or payments for purchase of, a qualified investment product that is the subject of the salary reduction agreement signed before January 1, 2008.

(d) The retirement system shall permit a company to register products from November 1 through December 15 and from May 1 through June 15 each calendar year.

(e) The executive director of the retirement system or his designee may establish the form and content of the registration application.

(f) A company is required to certify to the retirement system as required by this chapter in order to apply to register products. A company may submit certification and application for product registration simultaneously.

§53.16. Procedure for Product Registration.

(a) A company certified to offer a qualified investment product that is an annuity contract may register annuity products. A company,

other than a platform company, certified to offer qualified investment products other than annuity contracts may register such other investment products. A platform company certified to offer qualified investment products, other than annuity contracts, issued and registered with TRS by another company, may register such other qualified investment products. A company certified to offer both annuity contracts and qualified investment products other than annuity contracts may register both product types.

(b) A company applies to register products by providing all information required by the retirement system and by paying the required registration fee at the time it submits the application. A company shall submit information in the format and manner required by the retirement system. The retirement system may require a company to provide information electronically.

(c) In registering products, a company shall provide information concerning all the fees charged to an employee in connection with the participation in, or purchase of, each registered qualified investment product and the sale and administration of the product, including any specific options available in connection with the registered product if additional or different fees are charged in connection with the options. The information concerning fees shall be provided in the format and manner required by the retirement system.

(d) Information regarding fees shall include any additional fees that may be deducted by an entity other than the company from contributions for a registered product made by salary reduction agreement. In order for a product to be registered, the fees charged by the company and the other entity, when aggregated and deducted from contributions paid by salary reduction agreement, shall not exceed the amounts established in §53.3 of this title (relating to Maximum Fees, Costs, and Penalties).

(e) Registration to offer products is effective on the date determined by the retirement system after review of the registration application.

(f) Registration remains in effect for a period of five years from the effective date, unless the registration is suspended, revoked, or withdrawn.

(g) A company that has registered to offer products and paid the registration fee shall submit information to the retirement system on each product that is required to be registered. During its five-year registration period, a company may submit information on additional products during the registration dates established in this chapter. Registration of an individual product is effective when the retirement system posts the product on the retirement system Web site. Registration of an individual product terminates when a company's general registration to offer products terminates, regardless of the date on which registration of the individual product was effective.

(h) A company shall correct any erroneous, out of date, or misleading material information provided as part of its registration application or that appears on the retirement system's Web site in connection with a registered product of the company. A company shall notify the retirement system of a correction within 30 calendar days of the occurrence of an event causing a need for a change in the registration information. A company shall notify the retirement system not later than 30 calendar days after the occurrence of an event that causes a product to no longer be eligible to be registered.

(i) A company may update information for its registered products between the registration periods specified in §53.15 of this title (relating to Product Registration Requirement) by submitting the information in the manner established by the retirement system.

(j) The retirement system may deny, suspend, or revoke registration of products if the company does not provide all required information, if the product does not meet the requirements for registration, or if the retirement system receives notification of a violation regarding the product from the Texas Department of Insurance, the Texas Department of Banking, the Texas State Securities Board, or the company. The retirement system shall deny, suspend, or revoke registration of a product if the company has failed to certify to TRS; if TRS has denied, suspended, or revoked the certification of the company; or if the company has not certified to offer the product type sought to be registered or previously registered.

(k) The retirement system shall notify a company if it determines that registration should be denied. Additional or corrective information filed within thirty business days following notification of intent to deny shall not require payment of an additional registration fee. Denial of registration is final.

(l) Registration remains in effect in accordance with the provisions of this section unless suspended or revoked by the retirement system. Suspension, withdrawal, or revocation of a company's certification automatically suspends, withdraws, or revokes registration of the company's products.

(m) A company may withdraw its registration to offer products or the registration of an individual product by notifying the retirement system in writing.

(n) Upon suspension or termination of product registration by withdrawal, revocation, or expiration, a company shall not receive additional contributions for the qualified investment product, including a product for which a salary reduction agreement was signed when the product registration was in effect, unless excepted under §9(a)(8), Article 6228a-5, Texas Civil Statutes.

(o) A company may notify the retirement system that it will no longer offer a registered product as the subject of new salary reduction agreements. The retirement system may list such products separately on its Web site. A company shall maintain and renew its registration as required under this chapter for any period in which it continues to receive contributions pursuant to existing salary reduction agreements for the product.

§53.19. Proceedings to Suspend or Revoke Certification or Registration.

(a) The retirement system may suspend or revoke a registration, certification, or re-certification as provided under Article 6228a-5, Texas Civil Statutes. A proceeding to revoke or suspend is a contested case proceeding under Chapter 2001, Government Code.

(b) A period of suspension of certification or registration shall not extend the five-year period of company certification or product registration.

(c) In lieu of suspension or revocation of a company's registration to offer products and registration of all individual products, the retirement system may suspend or revoke one or more specific registered products if it finds that the grounds for suspension are limited to the specific product or products.

(d) In the event that a company is adversely affected by a decision or action of the retirement system revoking or suspending registration, certification, or re-certification, the company may request review by the designee of the executive director [~~chief operating officer~~] of the retirement system.

(e) The executive director's designee [~~chief operating officer~~] shall mail a final written administrative decision, which shall include

a statement that the company may appeal the decision to the executive director and the deadline for doing so.

(f) A company adversely affected by a final written administrative decision of the executive director's designee [~~chief operating officer~~] may appeal the decision to the executive director of TRS as provided in §43.5 of this title (relating to Request for Adjudicative Hearing). The executive director or his designee shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this title (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(g) The procedures of Chapter 43 of this title (relating to Contested Cases) are adopted by reference for the conduct of a proceeding subject to this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006048
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER X. TECHNOLOGY POLICY

37 TAC §1.291

The Texas Department of Public Safety (the department) proposes new §1.291, concerning Technology Policy. This new section is necessary to implement Texas Government Code, §411.0043, which requires the department to have a technology policy and utilize appropriate technological solutions to improve the department's ability to perform its functions.

Cheryl MacBride, Deputy Director, Services, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be appropriate technological solutions that improve the department's ability to perform its functions, including, where appropriate, interaction with the public via the internet.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773; susan.estringel@txdps.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.0043 which authorizes the commission to implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions.

Texas Government Code, §411.004(3) and §411.0043 are affected by this proposal.

§1.291. Technology Policy.

As provided under Texas Government Code, §411.0043, the department shall use appropriate technological solutions to improve the department's ability to perform its functions. Technological solutions shall, where appropriate, ensure that the public is able to interact with the department on the internet.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

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Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 424-5848

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CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES

37 TAC §6.11, §6.12

The Texas Department of Public Safety (the department) proposes amendments to §6.11 and §6.12, concerning Eligibility and Application Procedures.

The amendments to §6.11 are necessary to provide consistency with changes made by 81st Legislature, 2009 to Texas Government Code, §411.177(a) which removed references to the proficiency certificate requirement. In addition, amendments clarify that the department will establish by policy the required method and form of proof of proficiency.

The amendments to §6.12 are intended to articulate the department's policy of automating the application process to include: encouraging online application, requiring submission of fingerprints in an electronic format, and adopting the use of photographs through the department's driver license system or other electronic means.

Cheryl MacBride, Deputy Director, Services, has determined that for each year of the first five-year period the rules are in effect there will be no significant fiscal implications for state or local government, or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater efficiency through lower costs, less paperwork, and greater efficiency in application processing. There should be minimal economic costs resulting from the adoption of these rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, P.O. Box 2047, MSC-0246, Austin, Texas 78765-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Government Code, §411.174(a)(1), which authorizes the department to determine the form in which applications are submitted, and Texas Government Code, §411.197, which authorizes the department to adopt rules to administer Texas Government Code, Subchapter H relating to License to Carry a Concealed Handgun.

The proposed amendments affect Texas Government Code, §§411.174, 411.177, 411.184, 411.185, 411.188, and 411.201.

§6.11. Proficiency Requirements.

(a) The proficiency demonstration course will be the same for both instructors and license applications. The course of fire will be at distances of three, seven, and fifteen yards, for a total of fifty rounds.

(1) Twenty rounds will be fired from three yards, as follows:

(A) five rounds will be fired "One Shot Exercise"; two seconds allowed for each shot;

(B) ten rounds will be fired "Two Shot Exercise"; three seconds allowed for each two shots; and

(C) five rounds will be fired; ten seconds allowed for five shots.

(2) Twenty rounds will be fired from seven yards, fired in four five-shot strings as follows:

(A) the first five shots will be fired in ten seconds;

(B) the next five shots will be fired in two stages:

(i) two shots will be fired in four seconds; and

(ii) three shots will be fired in six seconds.

(C) the next five shots at seven yards will be fired "One Shot Exercise"; three seconds will be allowed for each shot; and

(D) the last five shots fired at the seven-yard line, the time will be fifteen seconds to shoot five rounds.

(3) Ten rounds will be fired from fifteen yards, fired in two five-shot strings as follows:

(A) the first five shots will be fired in two stages:

(i) two shots fired in six seconds; and

(ii) three shots fired in nine seconds.

(B) the last five shots will be fired in fifteen seconds.

(b) A student must score at least 70% on the written examination and shooting proficiency examination, in order to establish [~~obtain a~~] proficiency [~~certificate~~]. A student will have three [~~(3)~~] opportunities to pass the written examination and shooting proficiency examination.

(c) An instructor must submit failures of the written examination or shooting examination to the department on the class completion notification and must indicate if the failure occurred after the student had been given three [~~(3)~~] opportunities to pass the examination.

(d) Upon successful completion of both the written and shooting proficiency examinations, the qualified handgun instructor may certify that the concealed handgun license applicant has established his or her proficiency, in a manner to be determined by the department.

§6.12. [~~Basic Information to be Submitted with~~] Application Procedure and Required Materials.

In addition to the information required by the Act, an applicant [~~application~~] must submit [~~contain~~] all the following items, whether submitted electronically, through the online application process, or otherwise:

(1) Evidence of proficiency [~~Proficiency certificate~~]. The applicant must submit evidence of [~~a handgun~~] proficiency, as defined by §6.11 of this title (relating to Proficiency Requirements) reflecting the [~~certificate (TR 100) issued upon~~] successful completion of a handgun proficiency course approved by the department and taught by a certified handgun instructor. Evidence of [~~A~~] proficiency [~~certificate~~]

submitted by an original applicant will not be accepted by the department if it is more than two years old. Evidence of [~~A~~] proficiency [~~certificate~~] submitted by a renewal applicant will not be accepted by the department if it is more than six months old.

(2) Driver license number [~~Driver License Number~~]. An applicant shall provide a valid driver license number or identification certificate number issued by the department or by the issuing agency in the state of residence for non-resident applicants. Non-resident applicants and license holders must submit color photocopies of the front and back of their valid driver license or identification card issued by the appropriate state agency in their home state.

(3) Photographs. Photographs are required with original concealed handgun license applications. Photographs are not required for renewal applications or instructor-only applications as long as the existing photograph on file with the department meets quality standards. Applicants may be required to submit new or updated photographs if the existing photographs do not meet quality standards or the applicant's appearance has changed such that identification is inhibited. If an applicant is required to submit new or updated photographs, the [~~Two recent color passport photographs of the applicant. The~~] applicant shall submit two identical photographs of the applicant to the department [~~person who fingerprints the applicant, as detailed in paragraph (4) of this section~~]. The photographs must be un-retouched color prints. Snapshots, vending machine prints, and full length photographs will not be accepted. The photographs must be 2 inches by 2 inches in size and printed on photo quality paper. The photographs must be taken in normal light, with a contrasting white, [~~or~~] off-white, or blue background. The photographs must present a good likeness of the applicant taken within the last six months. [~~The applicant should be in normal attire and may not be wearing a hat or dark glasses.~~] Unless worn daily for religious purposes, all hats or headgear must be removed for the photograph and[~~. In all cases,~~] no item or attire may cover or otherwise obscure any facial features (eyes, nose, and mouth) [~~part of the face~~]. Eyeglasses must be removed for the photograph [~~worn on a daily basis may be worn for the photograph. However, there must be no reflections from the eyeglasses in the photograph that obscure the eyes. Dark glasses or non prescription glasses with tinted lenses are not acceptable unless required for medical purposes. The department may require a certificate from the applicant's treating physician to confirm that such items are medically required~~]. The photographs must present a clear, frontal image of the applicant[~~, except as provided below,~~] and include the full face from the bottom of the chin to the top of the head, including hair. The image of the applicant must be between 1 and 1-3/8 inches. Only the applicant may be portrayed. Photographs in which the face of the person being photographed are not in focus will not be accepted. Upon development of an interface allowing the Regulatory Services Division to access the photographs on file with the Driver License Division system or development of other electronic means to obtain the applicant's photograph, applicants may not be required to submit printed photographs. [~~Military personnel under 21 years of age must submit two identical color passport photos of the applicant in profile facing the left shoulder, 2 inches by 2 inches, taken in normal light with a white or off-white background. The photograph must include the bottom of the chin to the top of the head. Photos in which the face of the person being photographed is not in focus will not be accepted.~~]

(4) Fingerprints. Effective March 1, 2011, all original applicants must submit fingerprints through the Fingerprint Application Service of Texas (FAST), or by an entity qualified to take electronic fingerprints of an applicant for a license through the FAST system. All applicants must display to the person recording the fingerprints a driver's license or personal identification card issued by the applicant's state of residence. If fingerprints are not taken electronically, the department will resubmit renewal applicants' existing fingerprints for background check processing. However, if fingerprints on file do not meet current FBI or Texas quality standards, applicants will be required to submit new fingerprints to complete the renewal application process. [~~Two fingerprint cards. The applicant must be fingerprinted by a person appropriately trained in recording fingerprints who is employed by a law enforcement agency or by a private entity designated by a law enforcement agency, as an entity qualified to take fingerprints of an applicant for a license. The applicant must display a Texas driver license or personal identification card issued by the department to the person recording the applicant's fingerprints. If the applicant is a non-resident, the applicant must display a driver license or personal identification card issued by the appropriate agency in the applicant's state of residence. The applicant must deliver two passport photographs as described in paragraph (3) of this section, two blank fingerprint cards supplied by the department, and an instruction page included in the application materials. An individual who is applying for an instructor certificate only is not required to submit photographs. Two complete sets of legible and classifiable fingerprints of the applicant must be recorded on cards provided by the department.~~] The person who records the applicant's fingerprints shall:

(A) verify [~~that~~] the identity [~~passport photographs are~~] of the person being fingerprinted [~~(not required for instructor applicants)~~];

(B) [~~either~~] complete and [~~or~~] verify the accuracy of the non-fingerprint data being submitted [~~on the card~~]; and

(C) record the individual's fingerprints. [~~on the card, in a manner consistent with that normally done for an arrest fingerprint card, including the simultaneous impressions;~~]

[~~(D) obtain the signature of the applicant on both fingerprint cards and on the back of one of the passport photographs (not required for instructor applicants). The applicant's signature must comply with §15.21 of this title (relating to Signature);~~]

[~~(E) sign the fingerprint card and the back of the same passport photograph signed by the applicant; (not required for instructor applicants); and~~]

[~~(F) return all documents to the applicant to be forwarded to the department.~~]

(5) Signature of applicant. The applicant must provide a signature in the form required by the department and must comply with §15.21 of this title (relating to Signature). Upon development of an interface allowing the Regulatory Services Division to access the digitized signature on file with the Driver License Division's system or development of other electronic means to obtain the applicant's signature, applicants may not be required to submit a signature. [~~The applicant must sign the passport photograph holder provided by the department. The applicant's signature must comply with §15.21 of this title.~~]

(6) Proof of age. Proof of age may be established by a Texas driver license or personal identification card issued by the department. Non-resident applicants may establish proof of age by providing a copy of their valid driver license or personal identification card issued by the appropriate agency in their resident state. If an applicant cannot show proof of age through a driver license or personal identification card issued by the department, or appropriate state agency in his or her [~~their~~] resident state, the applicant must submit alternative proof of age[~~. The applicant may submit a certified copy of the applicant's birth certificate~~] as prescribed in §15.24(1) of this title (relating to Identification of Applicants).

(7) Social Security number. An applicant must provide the applicant's Social Security number. This information is required to as-

sist in the administration of laws relating to child support enforcement, as required and authorized by Family Code, §231.302.

(8) Failure to complete application process [~~provide information~~]. If an applicant fails to provide all required application materials, and [~~or~~] fails to provide within 90 days of the department's request any additional information or materials requested by the department [~~respond to a request by the department for additional information~~] necessary to process the application, the application process will be terminated as set out in §6.13(a) of this title (relating to Application Review and Background Investigation).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006036
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 424-5848

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SUBCHAPTER G. CERTIFIED HANDGUN INSTRUCTORS

37 TAC §§6.71 - 6.73, 6.78, 6.83, 6.84, 6.87

The Texas Department of Public Safety (the department) proposes amendments to §§6.71 - 6.73, 6.78, 6.83, 6.84, and 6.87, concerning Certified Handgun Instructors.

The amendments to §§6.71, 6.72, and 6.78 are necessary to implement the requirement that concealed handgun license instructor's training be offered through an online format for the initial renewal and on alternate subsequent renewals as required by Texas Government Code, §411.190.

The amendments to §6.73 are necessary to repeal the requirement that any non-semi-automatic weapon used to qualify be at least .38 caliber, and to clarify that the prohibition against optical enhancers is applicable to all applicants for concealed handgun licenses, and not only applicants for instructor certifications.

The amendments to §6.83 are necessary to repeal the current rule-based requirement of range certification. The certification requirement is without specific statutory authority. Moreover, there are no statutory standards for range safety, nor any statutory basis for establishing such standards. "Certifying" the range facilities creates unsupported expectations of public safety and exposes the department to potential liability for range accidents. It also appears to create a license without statutory authority and without statutory guidance regarding eligibility or disciplinary action.

The amendments to §6.84 provide consistency with the proposed amendments to §6.83. As such, the amendments to §6.84 are proposed in a manner consistent with the proposed amendments to §6.83, by striking the references to "range number", and adding the requirement that the range be identified by name.

The amendments to §6.87 are necessary to provide consistency with changes made by the 81st Legislature, 2009 to Texas Government Code, §411.177(a) which removed references to proficiency certificate requirements.

Cheryl MacBride, Deputy Director, Services, has determined that for each year of the first five-year period the rules are in effect there will be no significant fiscal implications for state or local government, or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater efficiency through lower costs, less paperwork, and greater efficiency in application processing. There should be minimal economic costs resulting from the adoption of these rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, P.O. Box 2047, MSC-0246, Austin, Texas 78765-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §411.197, which authorizes the department to adopt rules to administer Texas Government Code, Subchapter H relating to License to Carry a Concealed Handgun.

The proposed amendments affect Texas Government Code, §§411.174, 411.177, 411.184, 411.185, 411.188, 411.190, and 411.201.

§6.71. Instructor Application and Background Investigation.

(a) An instructor applicant is subject to the same background investigation required for license applicants.

(b) An instructor applicant who is required to attend in person and is not able to attend the course of instruction for which he or she is scheduled may request to be rescheduled for another class. If the instructor applicant fails to attend this second scheduled class, the application will be terminated and the individual will be required to submit a new application in order to attend a course in the future.

(c) An instructor applicant who is eligible to take the renewal course online must complete the course prior to the expiration of the instructor's certificate, but not earlier than six months prior to the date of expiration. If the instructor renewal applicant fails to complete the course within six months of the date of expiration, the application will be terminated and the individual will be required to submit a new application in order to attend a course, or take the online course, in the future.

§6.72. Instructor Training.

To qualify for certification as a handgun instructor, an instructor applicant must apply for and successfully complete the instructor training course offered by the department. As part of the initial training course, and each alternate renewal training course, the instructor applicant must demonstrate handgun proficiency, and initially and at every renewal, must pass a written test covering the required subjects.

§6.73. Firearm Proficiency Training Equipment.

An instructor applicant must bring the following required equipment to firearm proficiency training: one non semi-automatic handgun; one semi-automatic handgun; ammunition; ear protection (over-the-ear) and eye protection; other appropriate protective clothing; and other equipment as determined by the department. Handguns must be at least .32 caliber [~~semi-automatic or .38 caliber non-semi-automatic~~]. No optical enhancers will be allowed for instructor applicants or for applicants of concealed handgun licenses.

§6.78. Qualifying Scores.

(a) Shooting proficiency. Prior to the initial certification, and at each alternate renewal, an [~~An~~] instructor applicant must qualify on both the semi-automatic and non semi-automatic handgun with minimum score of 90%. The instructor applicant will have three opportunities to demonstrate proficiency. The instructor applicant must show proficiency during the training course.

(b) Written exam. An instructor applicant must pass a written exam, whether online or in person, with a minimum score of 70%. The instructor applicant will be given one opportunity to pass the written exam during the in-person training course, or the exam may be taken online [~~courses~~]. If the instructor applicant fails the first attempt [~~written exam~~], [~~then~~] the test may be attempted two more times, whether [~~repeated twice~~] at [~~regularly~~] scheduled training courses held by the department, or on-line. The instructor applicant must pass the written exam by the third attempt and within six months of the date of expiration [~~application~~]. Failure to pass the exam within six months will terminate the application process.

§6.83. Shooting Range and Classroom Facilities.

[~~(a)~~] All classroom and range instruction for license applicants shall be conducted in this state. Classroom [~~All classroom~~] and range instruction may be [~~facilities are~~] subject to observation [~~inspection and registration~~] by the department, for purposes of insuring compliance with the instruction and examination requirements [~~as provided by this chapter~~].

[~~(b) A shooting range which is to be used for instruction or proficiency demonstration of license applicants must be registered by the owner with the department as provided by this chapter. By virtue of registration of the range with the department, the range owner consents:~~]

[~~(1) to cooperate with the department in instruction of license applicants;~~]

[~~(2) to permit entry of department personnel onto the range facilities during normal business hours and at any time while instruction of license applicants is being conducted;~~]

[~~(3) to permit inspection of range facilities by department personnel;~~]

[~~(4) to permit monitoring of instruction of license applicants by department personnel; and~~]

[~~(5) to abide by the rules of this chapter.~~]

[~~(c) A range owner may withdraw from registered status by mailing the department 30 days advance written notice. The notice should identify the range owner and range number.~~]

[~~(d) Range instruction and proficiency demonstration must be conducted at a shooting range facility registered with the department. A proficiency certificate must indicate the range on which the proficiency examination was given. If a proficiency examination is conducted at a range not registered with the department, the certificate will be rejected.~~]

[~~(e) To be registered, each range must comply with applicable municipal, state, and federal law. The range must have the capability of shooting at a distance of 15 yards.~~]

[~~(f) No fee is required to register a shooting range with the department. To register a range, the range owner shall report the following information on a form provided by the department:~~]

[~~(1) the owner of the range;~~]

[~~(2) the physical address of the range;~~]

[~~(3) the mailing address of the range owner; and~~]

[~~(4) a notarized Range Certification Affidavit signed by a certified handgun instructor.~~]

[~~(g) Each registered range will be assigned an identification number to facilitate monitoring by the department of instruction of license applicants.~~]

[~~(h) A mobile shooting range may be registered with the department. The range owner must provide the department with a permanent mailing address in this state where the owner agrees to receive correspondence.~~]

§6.84. Prior Notice of Training Required.

For each training session, a certified instructor shall give prior notice to the department of the date, time, classroom location, range name and location, [~~range number,~~] and the names and certificate numbers of one or more certified instructors who are responsible for the training session. Notice shall be submitted in a manner required by [~~this section may be faxed to~~] the department[~~, and may include multiple training sessions~~].

§6.87. Instructor Record Retention.

(a) Records to be retained and available for inspection. A certified handgun instructor shall make available for inspection to the department any and all records maintained by a certified handgun instructor under the Act. A certified handgun instructor shall retain the following:

(1) a record of each document reflecting the instructor's certification of proficiency as provided in §6.11(d) of this title (relating to Proficiency Requirements) [~~certificate issued by the instructor~~];

(2) a record of each license applicant who has applied for instruction, whether accepted or rejected for instruction;

(3) post-test scores;

(4) written critiques or notes made by the instructor;

(5) proficiency demonstrations;

(6) course materials; and

(7) copies of reports submitted to the department.

(b) Records must be retained for a period of three years after completion. Records must be stored in a safe and secure place and must be available for inspection by authorized officers of the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006037
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 424-5848

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37 TAC §6.89

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §6.89, concerning Proficiency Certificates.

The repeal of §6.89 is necessary to provide consistency with changes made by the 81st Legislature, 2009 to Texas Government Code, §411.177(a) which removed references to proficiency certificate requirements.

Cheryl MacBride, Deputy Director, Services, has determined that for each year of the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government, or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There are no anticipated economic costs to individuals who are required to comply with repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be updated and current rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, P.O. Box 2047, MSC-0246, Austin, Texas 78765-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §411.197, which authorizes the department to adopt rules to administer Texas Government Code, Subchapter H relating to License to Carry a Concealed Handgun.

The proposed repeal affects Texas Government Code, §§411.174, 411.177, 411.184, 411.185, 411.188, 411.190, and 411.201.

§6.89. Proficiency Certificates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006040
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 424-5848

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CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER L. MISCELLANEOUS

37 TAC §28.191

The Texas Department of Public Safety (the department) proposes new §28.191, concerning Sexual Assault Evidence in Cases Without Law Enforcement Reporting. This rule is proposed pursuant to 81st Legislature, 2009, HB 2626, which added Code of Criminal Procedure, Article 56.065 titled "Medical Examination For Sexual Assault Victim Who Has Not Reported Assault; Costs". This new article requires the department to pay appropriate fees for the forensic portion of the medical examination and for the evidence collection kit in specified circumstances, in addition to authorizing the department to develop procedures regarding the submission, transfer, and preservation of evidence collected under the article.

Cheryl MacBride, Deputy Director, Services, has determined that for each year of the first five-year period the rule is in effect, the fiscal implication for state and local government or local economies will be the cost to collect sexual assault samples and the cost to ship and store the sexual assault samples at the Texas Department of Public Safety.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the collection and preservation of potential evidence samples in sexual assault cases.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, TX 78765-4143, (512) 424-2143. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Code of Criminal Procedure, Article 56.065(i), which provides that the department shall adopt rules as necessary to implement this article.

Texas Government Code, §411.004(3) and Code of Criminal Procedure, Article 56.065(i) are affected by this proposal.

§28.191. Sexual Assault Evidence in Cases Without Law Enforcement Reporting.

Pursuant to Code of Criminal Procedure, Article 56.065, instructions and forms regarding the submission, transfer, and preservation of evidence and allowable reimbursement are located at the Crime Laboratory Service's homepage on the department's website at www.txdps.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006038
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 424-5848

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CHAPTER 37. SEX OFFENDER REGISTRATION

37 TAC §37.1, §37.2

The Texas Department of Public Safety (the department) proposes new §37.1 and §37.2, concerning Sex Offender Registration. The rules are necessary to clarify the method by which a social networking site may request and receive online identifiers maintained by the department that relate to a person required to register as a sex offender under Code of Criminal Procedure, Chapter 62.

Cheryl MacBride, Deputy Director, Services, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be publication of the method by which social networking sites may request online identifiers from the department relating to persons required to register as sex offenders under Code of Criminal Procedure, Chapter 62, to prescreen or preclude those persons from using the site.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be submitted to Scott Merchant, Crime Records, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (512) 424-5835. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Code of Criminal Procedure, Article 62.0061(b), which authorizes the department to establish a procedure through which a commercial social networking site may request online identifiers, and Code of Criminal Procedure, Article 62.010, which authorizes the department to adopt any

rule necessary to implement Code of Criminal Procedure, Chapter 62.

Texas Government Code, §411.004(3) and Code of Criminal Procedure, Article 62.0061(b) and Article 62.010 are affected by this proposal.

§37.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Department--The Texas Department of Public Safety.

(2) Online identifier--An online identifier as defined by Code of Criminal Procedure, Article 62.001.

(3) Provider--An eligible commercial social networking site as defined by Code of Criminal Procedure, Article 62.0061, and approved by the department.

§37.2. Commercial Social Networking Sites.

(a) A commercial social networking site may request access to online identifiers maintained by the department under Code of Criminal Procedure, Article 62.051(c)(7).

(b) Requests may be submitted to: Crime Records Service, Attn: Sex Offender Registration Unit, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or via e-mail at: txsor@txdps.state.tx.us.

(c) Requests for access submitted to the department must contain the following:

(1) name of the commercial social networking site;

(2) the website address of the commercial social networking site;

(3) name, mailing address, e-mail address of a point of contact for the commercial social networking site;

(4) the state or country where the commercial social networking site's articles of incorporation are filed; and

(5) a statement indicating whether or not a combination of advertising revenue and subscription fees generated by the commercial social networking site is in excess of $10,000 per annum.

(d) The department will determine if a requester of online identifiers meets the definition of provider.

(e) Approved providers will be assigned a user account and furnished instructions to access public information as defined by Code of Criminal Procedure, Article 62.005(b), and online identifiers maintained by the department under Code of Criminal Procedure, Article 62.051(c)(7).

(f) Information disseminated to the provider by the department is subject to the restrictions outlined by Code of Criminal Procedure, Article 62.0061.

(g) User accounts will be deactivated after six (6) months of inactivity. This does not preclude a provider from requesting reactivation of a user account.

(h) The department reserves the right to terminate a user account for a violation of any statute, administrative rule, or department policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006039
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS
SUBCHAPTER F. ENFORCEMENT

43 TAC §218.71

The Texas Department of Motor Vehicles (department) proposes amendments to §218.71, concerning Administrative Penalties, relating to limitations on the assessment and amount of administrative penalties.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §643.251 and §645.003 establish authority for administrative penalties for violations of Transportation Code, Chapters 643 and 645. Transportation Code, §1002.001 authorizes the adoption of rules by the department. The current rule has led to some confusion since the maximum administrative penalty amounts specified by Transportation Code, §643.251 appear to be dollar limits on individual enforcement actions, while the current rule's wording appears to be a dollar limit on each violation within that enforcement action. The proposed amendment clarifies the rule and conforms it to Transportation Code, §643.251.

The proposed amendment to §218.71(a) clarifies that the department's ability to impose administrative penalties is limited by the long-standing constitutional requirement of notice and opportunity for hearing. This change emphasizes the right of the motor carrier to a due process hearing.

Proposed amendments to §218.71(b) conform the rule terminology to that of the statute, to reflect the nature of the penalty as being administrative.

The proposed amendments to §218.71(b)(1) clarify that the $5000 limit for violations that are not knowingly made applies to the entire enforcement action and not to each violation within that enforcement action.

The proposed amendment to §218.71(b)(2) clarifies that the $15,000 limit for violations that are knowingly made applies to each violation within that enforcement action. The term "motor carrier" is used to replace "person" to conform to the statute.

The proposed amendment to §218.71(b)(3) clarifies that the $15,000 limit for violations that are knowingly made is additionally limited to $30,000 per enforcement action. Language relating to the meaning of "multiple violations" is deleted as unneeded since the limitation applies to an enforcement action, not "multiple violations."

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the continuation of industry practices that have reduced consumer complaints in the motor carrier industry. The reputation and sales practices of the industry may improve and the public's confidence in motor carriers may rise. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §218.71 may be submitted to Bill Harbeson, Director, Enforcement Division, Texas Department of Motor Vehicles, P.O. Box 2293, Austin, Texas 78768-2293. The deadline for receipt of comments is 5:00 p.m. on December 6, 2010.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003 and §645.003 which authorize the Board to adopt rules to enforce Transportation Code, Chapters 643 and 645.

CROSS REFERENCE TO STATUTE

Transportation Code, §643.251 and §645.003.

§218.71. Administrative Penalties.

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against a motor carrier required to register under this section if the motor carrier violates a provision of Transportation Code, Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645.

(b) Amount of administrative penalty.

(1) In an action brought by the department the aggregate amount of administrative penalty shall not exceed $5,000 unless it is found that the motor carrier knowingly committed a violation. [~~The penalty for each violation may be in an amount not to exceed $5,000.~~]

(2) In an action brought by the department if [~~If~~] it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not [~~penalty for that violation may be in an amount not to~~] exceed $15,000. A motor carrier [~~person~~] acts knowingly if that motor carrier [~~person~~] has acted with knowledge that acts are in violation of Transportation Code, Chapter 643 or Chapter 645, or a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645.

(3) In an action brought by the department if [~~If~~] it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed $30,000. [~~may be in an amount not to exceed $30,000. Multiple violations are all violations arising during a single episode pursuant to one scheme or course of conduct.~~]

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative [~~a~~] penalty.

(5) Any recommendation that a penalty should be imposed must be based on the following factors:

(A) the seriousness of the violation; including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006069
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 5, 2010
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§331.2, 331.17, 331.18

Proposed amended §§331.2, 331.17 and 331.18, published in the April 16, 2010, issue of the *Texas Register* (35 TexReg 3005), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on October 20, 2010.

TRD-201006020

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SUBCHAPTER N. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE

30 TAC §331.241, §331.243

Proposed new §331.241 and §331.243, published in the April 16, 2010, issue of the *Texas Register* (35 TexReg 3005), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on October 20, 2010.

TRD-201006021

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81

The Texas Ethics Commission (the Commission) adopts new §12.81, relating to the procedures for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction as provided by §571.0631 of the Government Code. The new §12.81 is adopted without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7971).

Section 12.81 describes procedures used for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction.

No written comments were received regarding the proposed rules during the comment period.

The new §12.81 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006047
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: November 11, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER M. SWEET POTATO WEEVIL QUARANTINE

4 TAC §19.133

The Texas Department of Agriculture (the department) adopts an amendment to Chapter 19, §19.133, concerning clarification to the Sweet Potato Weevil Quarantine, without change to the proposal published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7635).

The amendment provides that sweet potatoes from out-of-state sweet potato weevil quarantined areas are prohibited entry into sweet potato weevil-free areas of Texas. This clarification is necessary due to an oversight in the recently adopted amendment to §19.133, published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5523). The amendment to §19.133 is adopted to clarify that sweet potatoes grown in sweet potato quarantined areas of other states are prohibited entry into sweet potato weevil-free areas of Texas. The department believes it is necessary to take this action to prevent the spread of sweet potato weevil into sweet potato weevil-free areas of Texas.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine against out-of-state diseases and pests; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §26.5 relating to Definitions, §26.272 relating to Interconnection, §26.431 relating to Monitoring of Certain 911 Fees, §26.433 relating to Roles and Responsibilities of 9-1-1 Service Providers, and §26.435 relating to Cost Recovery Methods for 9-1-1 Dedicated Transport with changes to the proposed text as published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3716). The amendments update and clarify the responsibilities of certificated telecommunications utilities relative to 9-1-1 services. These amendments are adopted under Project Number 38047.

The commission received initial comments on the amendments from Intrado, Inc. (Intrado); the Texas Commission on State Emergency Communications and the Texas 9-1-1 Alliance (9-1-1 entities); GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Wireless Texas, LLC, Bell Atlantic Communications, Inc., MCI Communications services, Inc., d/b/a Verizon Business services, and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (collectively Verizon); and Southwestern Bell telephone Company d/b/a Texas (AT&T). The commission received reply comments on the amendments from AT&T and the 9-1-1 entities.

A public hearing on the amendments was held on July 27, 2010. All commenters were represented at the public hearing and supported certain revisions to the proposed amendments (Consensus Revisions). The commission appreciates the efforts of the commenters in developing the Consensus Revisions with commission staff. The commission incorporates the Consensus Revisions into the amendments with some minor changes.

General Comments

The 9-1-1 entities stated that they support the commission's efforts to update the existing 9-1-1 rules, as necessitated by an ever-evolving technological landscape for the delivery of communications services. The 9-1-1 entities further stated that the rules appropriately recognize that the 9-1-1 entities are the "first point" of authority for 9-1-1 deployment and resolution of 9-1-1 service issues. The 9-1-1 entities further stated that the rules appropriately recognize and clearly maintain the commission's stated policies on regulatory competition and public interest oversight and that the commission's approach is consistent with stated Congressional intent. The 9-1-1 entities stated that the proposed amendments should be adopted with a few non-substantive changes to reflect technology and market conditions associated with 9-1-1 emergency communications and that they agreed with most of the initial comments filed by Intrado and AT&T, and submitted that most of their suggestions were non-substantive in that they merely clarified the intent of the rules. The 9-1-1 entities also stated that they disagreed with Verizon's comments except on the issue of parity, that certificated telecommunications utilities (CTUs) should be treated comparably and that there should be protection from material changes in the 9-1-1 network *(e.g.,* local access and transport area (LATA) boundary changes from current configurations). The 9-1-1 entities stated that 9-1-1 service is transitioning from a regulated to a quasi-competitive environment that may never truly reach full deregulation because of the special potential bottleneck relationship that a 9-1-1 network services provider and/or 9-1-1 database management services provider may have in the emergency communications environment. The 9-1-1 entities stated that as recently recognized by Congress in the Net 9-1-1 Act and in the Federal Communications Commission's (FCC's) rules, 9-1-1 emergency communications are different than other local telecommunications services because 9-1-1 emergency communications must have some regulations, as there remains a compelling need for interconnection, access, and interoperability from all types of carriers and public safety authorities. The 9-1-1 entities further stated that because they and the commission have authority and responsibility for different aspects of 9-1-1 service, it is imperative that these obligations be harmonized and provide checks and balances consistent with protecting the public interest and public safety. Further, the 9-1-1 entities stated that private interests and commercial agreements among private parties under any reasoned reading of statutory construction or the public interest should not hinder, constrain, or abridge the statutory responsibility of 9-1-1 administrative entities. The 9-1-1 entities stated that they had been in discussions with AT&T, Intrado, and Verizon with the hope of submitting consensus changes addressing a majority, if not all, of the comments filed in this proceeding.

Verizon stated that the amendments to the rules were confusing and unwarranted and should be rejected in favor of the original rule language. Verizon stated that the meaning of "appropriate CTU" is no longer clear. Verizon stated that the approval process prior to provision of local exchange telephone service is ambiguous. Verizon stated that the proposed rule language effectively grants 9-1-1 entities unilateral power to dictate 9-1-1 service migration despite the fact that carriers bear the responsibility to deploy the facilities that provide 9-1-1 service. Verizon stated that the new rule subsections could require carriers to redeploy trunks every time a change is made to the entity managing the system.

Verizon stated that problems have arisen around the country where 9-1-1 entities negotiate with other database and routing providers without including the carriers responsible for deployment.

Verizon stated that these circumstances can result in significant additional costs on carriers to install trunks, sometimes to distant locations. Verizon stated that the new rules may also impact a carrier's involvement in or even advance notice of code exhaust efforts.

Verizon stated that the FCC requires carriers to deploy facilities up to the input to the local incumbent local exchange carriers' (ILECs') selective router, and further provides that the carrier is responsible for those costs. Verizon stated that the proposed rule language eliminates a carriers' obligation to negotiate in good faith for points of termination and places unilateral discretion in the hands of the 9-1-1 entity.

AT&T stated that it generally supports the commission's efforts to update the rules to address technological changes in the telecommunications industry, including the move toward Next Generation E9-1-1 (NG9-1-1) services and to clarify roles and responsibilities of 9-1-1 service providers. However, AT&T stated that some of the amendments were confusing - creating questions that could potentially lead to legal disputes over the interpretation of the proposed changes. AT&T stated that the confusion results from the commission's attempt to address both

competition and next generation solutions, because the existing rules did not contemplate competition in the provision of 9-1-1 services. AT&T stated that because the proposed rules do not account for the architectural differences in the delivery of 9-1-1 calls as between the traditional circuit switched network and an Internet Protocol (IP)-based network, the amendments could be not only confusing but could possibly create disparate treatment between ILECs and competitive local exchange carriers (CLEC) and as between CTUs and other unregulated 9-1-1 network service providers.

AT&T stated that since the filing of its initial comments, it has engaged in discussions with the 9-1-1 entities, and understand that the 9-1-1 entities have spoken with Verizon and Intrado, in hopes of reaching agreement on proposed language that would alleviate the concerns raised by AT&T in its comments.

Commission Response

The amendments are necessary to address competition and changes in technology in the provision of 9-1-1 service. The amendments are intended to provide rules for 9-1-1 service that are technologically and competitively neutral. The amendments reflect that a 9-1-1 administrative entity may choose to purchase 9-1-1 network services from a provider other than an ILEC. In addition, the amendments reflect that CLECs often provide access to 9-1-1 service for their end-user customers through a wholesale CLEC that aggregates the 9-1-1 traffic of more than one CLEC.

Use of the Term "IP-Based"

Intrado stated that since the term "IP-based" can mean any use of the Internet, every reference to the term throughout the amendments should be preceded by the words "securely managed" to create a distinction between the best-efforts public Internet and a next generation 9-1-1 network that relies on IP-protocol.

Commission Response

The commission agrees with Intrado that "9-1-1 network services" that are "IP-based" need to be of the highest quality, which is implied with the descriptive words "securely managed." "9-1-1 network services" will not be "best effort" IP-based services, which have no higher quality of service expectations than the public Internet. Consistent with the Consensus Revisions, the commission has made revisions to reflect this intention, but does not believe that it needs to make this distinction every time the term "IP-based" is used in the commission's rules.

§26.5(10) Automatic location identification (ALI)

AT&T stated that the term "or other description of the location" be deleted from the definition of automatic location identification (ALI). AT&T stated that this type of "descriptive" or "supplement" information is not included in the master street address guide (MSAG); could potentially remain on a customer's record even after they moved to a new address; and could be more appropriately maintained by the public safety answering point (PSAP) itself. AT&T recommended that the commission adopt the definition for ALI used by the National Emergency Number Association (NENA). The 9-1-1 entities stated that they agree with AT&T's clarifying definitions and terms from NENA standards.

Commission Response

The commission agrees with AT&T and the 9-1-1 entities and revises the provision consistent with the Consensus Revisions.

§26.5(40) Commercial mobile radio service (CMRS)

Intrado stated that the commission's rules should incorporate the FCC's definition of commercial mobile radio service (CMRS) as set forth in 47 C.F.R. §20.3.

Commission Response

The commission agrees with Intrado and revises the provision consistent with the Consensus Revisions.

§26.5(64) Dedicated 9-1-1 trunk

AT&T stated that the proposed amendments were particularly problematic because they limit a CTU's ability to recover its cost of providing 9-1-1 access if there are significant network architecture changes. AT&T stated that in an IP or NG9-1-1 solution, CTUs may be hauling calls across the state to a limited number of selective routers, and because a CTU might not have facilities in all locations in the state, it may be purchasing facilities at special access rates while only being reimbursed $165 non-recurring and $39 per month for the trunk and the entire transport facility. AT&T stated that due to the large number of switches it has and its embedded base of customers, the order of magnitude of the problem would be greater for AT&T than other CTUs. AT&T recommended clarifying that the current definition of 9-1-1 dedicated trunks is limited to the traditional time-division-multiplexed (TDM) network. Alternatively, if the commission intended the one definition to encompass both TDM and IP network configuration, AT&T recommended that the transport component referred to in the last sentence of the definition be removed. AT&T also stated that the problem is that this definition provides the basis for a CTU's cost recovery as provided in §26.433(c) and that use of the term "trunk" is misleading because trunks and facilities are not the same thing, a distinction that becomes more significant in the IP world where the term "trunk" does not apply.

Commission Response

The commission agrees with AT&T and adopts the Consensus Revisions, which incorporate the two concepts of direct trunking and indirect trunking into the single definition of 9-1-1 dedicated trunk.

§26.5(114) Interconnection

AT&T stated that the word "local" should be inserted on the fourth and fifth line so that "basic telecommunications service" reads "basic local telecommunications service" to be consistent with the language of §26.403 relating to Texas High Cost Universal Service Plan (THCUSP).

Commission Response

The commission agrees and revises the provision consistent with the Consensus Revisions.

§26.5(117) Internet Protocol (IP)

AT&T stated that the commission should adopt the NENA definition for IP because the proposed definition is not completely accurate. AT&T stated that some of the functions listed in the proposed definition can be performed by circuit switched networks. AT&T stated that adoption of the NENA definition will provide consistency across the industry and will eliminate confusion and potential disagreements among 9-1-1 stakeholders. The 9-1-1 entities stated that they agree with AT&T's clarifying definitions and terms from NENA standards.

Commission Response

The commission adopts the definition of Internet Protocol provided in the Consensus Revisions.

§26.5(129) Local exchange carrier (LEC)

AT&T stated that the last sentence of the definition is now incorrect because it reads as follows: "local exchange company is also referred to as a local exchange carrier," yet the definition has been changed to say "carrier" instead of "company." AT&T proposed changing the sentence to read as follows: "[a] local exchange carrier is also referred to as a local exchange company."

Commission Response

The commission has revised this definition consistent with the Consensus Revisions.

§26.5(147) Next-generation 9-1-1 system (NG9-1-1 system)

Intrado stated that the proposed definition of NG9-1-1 system lacks two important characteristics, that it is secure and that it is capable of coexisting with legacy 9-1-1 systems. AT&T recommended that the commission adopt the NENA definition for NG9-1-1 system. AT&T stated that adopting the NENA definition will provide consistency across the industry and will eliminate confusion and potential disagreement among 9-1-1 stakeholders. The 9-1-1 entities stated that they agree with AT&T's clarifying definitions and terms from NENA standards. The 9-1-1 entities stated that instead of the descriptive term "coexist" they recommended use of the descriptive term "interoperating" to make it clear that there is no continuous requirement that legacy 9-1-1 networks "exist" in the future.

Commission Response

The commission agrees with Intrado, AT&T, and the 9-1-1 entities and revises the provision consistent with the Consensus Revisions.

§26.153 Definition of North American Numbering Plan (NANP)

AT&T recommended adoption of the NENA definition of NANP. AT&T stated that it did not have any particular objection to the proposed definition, but stated that the NENA definition is clear and adoption would provide consistency across the industry and eliminate confusion and potential disagreements among 9-1-1 stakeholders. The 9-1-1 entities stated that they agree with AT&T's clarifying definitions and terms from NENA standards.

Commission Response

The commission agrees with AT&T and the 9-1-1 entities and revises this rule consistent with the Consensus Revisions.

§26.5(155) NXX

AT&T stated that the definition of NXX in the proposed rule is incorrect. AT&T stated that the reference to a "local exchange" should be to a "rate center." AT&T recommended adoption of the NENA definition of NXX to provide consistency across the industry and eliminate confusion and potential disagreements among 9-1-1 stakeholders. The 9-1-1 entities stated that they agree with AT&T's clarifying definitions and terms from NENA standards.

Commission Response

The commission agrees with AT&T and the 9-1-1 entities and revises the rule consistent with the Consensus Revisions.

§26.5(161) P.01 grade of service

AT&T stated that it believes the reference to the "company's average busy hour" is confusing and recommends adopting the NENA definition. AT&T stated that the NENA definition is more accurate - the measure of blocked calls on the facility being graded. Additionally, AT&T stated that adoption of the NENA definition would provide consistency across the industry and eliminate confusion and potential disagreements among 9-1-1 stakeholders. The 9-1-1 entities stated that they agree with AT&T's clarifying definitions and terms from NENA standards.

Commission Response

The commission agrees with AT&T and the 9-1-1 entities and revises the provision consistent with the Consensus Revisions.

§26.5(270) 911 or 9-1-1 service and §26.5(278) 9-1-1 service

Intrado stated that §26.5 has two definitions for "911 service" and stated that both definitions are too narrow. Intrado stated that in a next generation environment, in light of the potential devices that may be used to initiate 9-1-1 requests for help, it is more appropriate to refer to access to 9-1-1 emergency services as "requests for assistance" or RFAs, rather than calls, but then stated that the commission should retain the definition that refers to Texas Health and Safety Code §771.001(6). The 9-1-1 entities also stated that there is no need for two definitions of 9-1-1 service, and stated that both definitions are too narrow in light of future potential devices and that it may literally be more accurate to use the term "Requests for Assistance." The 9-1-1 entities agreed with Intrado that §26.5(270) should be deleted and §26.5(278) should be maintained.

Commission Response

The commission agrees with Intrado and the 9-1-1 entities. The commission has deleted proposed §26.5(270) and revised §26.5(278), consistent with the Consensus Revisions.

§26.5(273) 9-1-1 database services

AT&T requested that the last sentence in the definition be clarified because it is confusing. AT&T stated that it is not clear whether the definition is intended to refer to the "9-1-1 database" or the "9-1-1 database manager." Additionally, AT&T stated that ". . . exchange information with other management service provider databases for CMRS or nomadic VoIP. . ." is also confusing because it is not clear what kind of information is to be exchanged. Similarly, AT&T stated that the phrase "to include or exclude other functions" is not clear. AT&T recommended replacing it with "and other functions." The 9-1-1 entities agreed with AT&T's recommendation.

Commission Response

The commission agrees with AT&T and the 9-1-1 entities and revises the provision consistent with the Consensus Revisions.

§26.5(274) 9-1-1 network services

AT&T recommended modifications to clarify and more accurately describe the functions provided.

Commission Response

The commission agrees with AT&T and revises the provision consistent with the Consensus Revisions.

§26.5(275) 9-1-1 network services provider

Intrado stated that providers of any component of 9-1-1 network service should be required to be a CTU. AT&T strongly recommended that the commission modify the proposed definition to require that a 9-1-1 network service provider be a CTU. AT&T noted that the current definition contains this requirement and

recommended that the commission keep it. AT&T stated that it is unclear why the commission would require 9-1-1 database management service providers to obtain a certificate, but not 9-1-1 network service providers. AT&T stated that due to the critical nature of 9-1-1 services, it is of paramount importance that the 9-1-1 network service provider be capable of providing reliable and redundant service and that it have the technical expertise to not only maintain such service but that it have the expertise to quickly trouble shoot problems and restore 9-1-1 service should it be disrupted. Additionally, AT&T stated that 9-1-1 network service providers should be held to the same service quality standards and oversight as other CTUs and for that reason the commission should have jurisdiction over such providers.

The 9-1-1 entities stated that they agreed with AT&T and Intrado; providers of 9-1-1 network services must be a CTU. The 9-1-1 entities stated that the provision of 9-1-1 emergency service is a basic part of local telecommunications and interconnection services under the Federal Telecommunications Act of 1996, the Public Utility Regulatory Act (PURA), the Texas Health and Safety Code Chapter 771, and the commission's responsibilities associated with competition and the public interest.

Commission Response

The commission agrees with Intrado, AT&T, and the 9-1-1 entities and revises the provision consistent with the Consensus Revisions.

§26.272(e)(1)(B) E9-1-1 services AT&T stated that the proposed rule is confusing and not consistent with the manner in which these services are provided. AT&T recommended that the first sentence list the features individually, *e.g.* "ANI, ALI, selective routing." AT&T stated that the term "enhanced 9-1-1 features" is not defined. AT&T proposed new language. The 9-1-1 entities specifically agreed with AT&T that deleting "and/or" can be read as complicating and restricting ANI, ALI, and/or SR service combinations that can be offered and provided in many bundled and unbundled contexts.

Commission Response

The commission agrees with AT&T and the 911 entities and revises the provision consistent with the Consensus Revisions.

§26.272(e)(1)(B)(i)(I)

Verizon stated that the proposed provision is confusing and unwarranted and should be rejected in favor of retaining the original language. Verizon went on to state that it was unclear from the proposed language what meaning is attached to the term "appropriate CTU."

AT&T stated that it agreed with the proposed provision as long as AT&T is absolved from any obligation that it may have for the establishment of 9-1-1 trunks pursuant to interconnection agreements or commercial agreements. AT&T stated that where the terms of a party's interconnection agreement differ from the 9-1-1 network architecture established by the appropriate 9-1-1 administrative entity, the parties to the agreement will need to amend the respective interconnection agreement. AT&T stated that for example all of the T2A successor agreements contain language requiring that AT&T provide 9-1-1 trunks from the CLEC end office to the selective router. This means that any deviation from this requirement will require the affected parties to agree to amend their respective interconnection agreements and to submit such amendment to the commission for approval.

The 9-1-1 entities stated that because of AT&T's liability concerns, the rule must address the authority of 9-1-1 administrative entities to choose their 9-1-1 service arrangements and to remove legacy network elements that are not being used and are not needed in the provisioning of 9-1-1 service. The 9-1-1 entities stated that this clarification is especially important so that 9-1-1 administrative entities can avoid having CTUs charge them for such unused and unnecessary components. The 9-1-1 administrative entities also stated that §26.272(e)(1)(B)(vi) protects CTUs from any potential abuse by 9-1-1 administrative entities because a 9-1-1 administrative entity's determination and approval of what is "unnecessary" is subject to the authority of the commission.

Commission Response

The commission understands that based on the old rule language, some ILECs refused to activate interconnection for local calling purposes until after a CLEC's interconnection for access to 9-1-1 service was activated and tested. Additionally, the commission understands that in many cases, CLECs have ordered and provisioned dedicated 9-1-1 trunks and the 9-1-1 entities have paid for dedicated 9-1-1 trunks that the CLEC does not actually use to provide 9-1-1 service to its customers. Therefore, the commission has determined that the provision needs to be revised to clarify that the 9-1-1 network service provider is not responsible for another CTU's provisioning of or failure to provision access to 9-1-1 service properly. Instead, it is the responsibility of each CTU to get the appropriate 9-1-1 administrative entity's approval of its 9-1-1 service arrangement, and it is the appropriate 9-1-1 administrative entity's responsibility for assuring that each 9-1-1 service arrangement it approves meets all state and federal requirements.

In the event an ILEC is the 9-1-1 network service provider and a CLEC is not connecting directly to the ILEC to provide its end-user customers access to 9-1-1 service, the ILEC can provision and activate the CLEC's voice trunks after it is provided: (1) a written representation by a CLEC that it is providing 9-1-1 service to its end-user customers using an alternative 9-1-1 service arrangement, and (2) written approval of the CLEC's 9-1-1 service arrangement by the appropriate 9-1-1 administrative agency. This process is part of the Consensus Revisions and it addresses the commission's, AT&T's, and Verizon's concerns. The commission revises the provision consistent with the Consensus Revisions.

§26.272(e)(1)(B)(i)(II)

Verizon stated that the proposed provision is unnecessary and confusing. AT&T recommended that the provision continue to include reference to the ability to dial the three digits, 9-1-1, because this is the way in which most customers access 9-1-1 services. The 9-1-1 entities stated that they agree with AT&T.

Commission Response

The commission agrees with Verizon, AT&T, and the 9-1-1 entities and revises the provision consistent with the Consensus Revisions.

§26.272(e)(1)(B)(i)(III)

AT&T recommended that the commission reinsert the term "CTU" in defining the E9-1-1 selective router. AT&T also recommended that the provision be modified to refer to "9-1-1 tandems" and "IP-based 9-1-1 systems."

Commission Response

The commission revises the provision consistent with the Consensus Revisions.

§26.272(e)(1)(B)(i)(IV)

Verizon stated that the word "specification" should not be substituted for the words "routing information" because they are less clear and less descriptive. AT&T stated that the proposed rule is not completely accurate. AT&T stated that the proposed provision incorrectly removes the reference to routing calls based on ANI and/or ALI. Additionally, AT&T recommended that the term "CTU" be added in reference to the E9-1-1 selective routers to read, "CTUs E9-1-1 selective routers." AT&T also recommended that the terms "tandems" and "IP-based systems" be referred to as "9-1-1 tandems" and "IP-based 9-1-1 systems." AT&T stated that it agrees with Verizon's comments. The 9-1-1 entities stated that changes to the rules for "readability" should generally be rejected because in the context of 9-1-1 provisioning, there could be unintended consequences.

Commission Response

The commission generally agrees with Verizon, AT&T, and the 9-1-1 entities; changes made just for readability should be kept to a minimum to avoid unintended consequences. However, consistent with §26.272(e)(1)(B)(i)(III), the commission believes that to be clearer and more accurate, §26.272(e)(1)(B)(i)(IV) should refer to the "9-1-1 network service provider" rather than the "appropriate CTU." Further, the commission keeps the term "specifications" instead of "routing information" because use of the term "specifications" is a more accurate and technology neutral term; therefore it is more consistent with the commission's objective of incorporating new technologies in its 9-1-1 rules. These revisions are consistent with the Consensus Revisions.

§26.272(e)(1)(B)(i)(V) Verizon stated that the words "specified by the applicable 9-1-1 administrative entity" should be clarified to require that the ALI specified by the applicable 9-1-1 entity must be agreed to by the CTU. Verizon stated that this change is reasonable given that the CTU bears the responsibility for providing the ALI, and in doing so is limited by the number and make-up of the characters. Verizon stated that adding the language it suggests ensures agreement that the requested "other similar data" can, in fact, be accommodated by the CTU within any ALI data restrictions that may apply.

AT&T also objected to the proposed language "other similar data specified by the applicable 9-1-1 administrative entity" because it may require a CTU to provide non-standard information that is not maintained in the MSAG. AT&T recommended that this language be deleted or modified to state "specified by the applicable 9-1-1 administrative entity and as agreed to by the CTU." AT&T stated that it is concerned that non-standard information could potentially remain in a customer's record even after the customer moved to a new address, and in some cases information required by the 9-1-1 entity may be inaccurate. AT&T clarified that it is only objecting to non-standard requests to provide "descriptive" or supplemental information such as "also known as" information. For example, 1st Street in Austin, Texas is also known as Cesar Chavez Street, and a 9-1-1 administrative entity might ask to keep track of both street names on a customer record. Recording such non-standard information would require AT&T Texas to perform a manual entry, which could remain associated with a particular telephone number even after a customer has moved to another address.

AT&T also stated that nonstandard information would not be included in the customer's initial order; it would have to be added at a later time and would be extremely labor intensive to keep up with, in many cases requiring issuance of multiple orders on every telephone number on a street. AT&T stated that most PSAPs have call handling equipment that is capable of maintaining telephone number specific information in a local database. The PSAPs' computer aided display systems keep track of incidents and address specific information such as "the person at this address has communicable diseases, or stores highly flammable material, etc." and may provide a more appropriate location for this type of information.

The 9-1-1 entities stated that they do not read the commission's proposed changes to apply to the type of non-standard and supplemental information examples cited by AT&T, and agreed with using the NENA definition of ALI. The 9-1-1 entities stated that the commission's 9-1-1 rules should not require non-standard ALI, supplemental information, or customized ALI for each different CTU. Thus, the 9-1-1 entities did not object to further clarifying language incorporating the NENA definition and clarifying that there are no requirements in the 9-1-1 rules for non-standard ALI.

Commission Response

The commission agrees with Verizon, AT&T, and the 9-1-1 entities that the provision should not require CTUs to store or provide non-standard information as part of ALI. The commission revises the provision consistent with the Consensus Revisions to clarify that ALI does not include non-standard information or supplemental data.

§26.272(e)(1)(B)(ii)

Verizon stated that the change from non-published and published to non-listed and listed conflicts with its tariff language and could cause consumer confusion. Verizon requested that the commission include both terms if it must make this change. AT&T stated that it agrees with Verizon and has the same problem with tariff language.

Commission Response

The commission agrees with Verizon and AT&T and revises the provision consistent with the Consensus Revisions to include the terms non-published and non-listed, and published and listed.

§26.272(e)(1)(B)(ii)(I)

AT&T recommended deletion of the requirement that a CTU deliver the information to the appropriate 9-1-1 entity in addition to providing the information to the 9-1-1 database management services provider. AT&T stated that this requirement adds unnecessary work for the CTU and it should be the responsibility of the database provider to provide the information to the 9-1-1 administrative entity with which it contracts.

Commission Response

The commission agrees and revises the provision consistent with the Consensus Revisions.

§26.272(e)(1)(B)(vi) and §26.433(i)

Verizon requested that the rules be deleted in their entirety. Verizon stated that the provisions might eliminate a carrier's ability to negotiate facility deployment or placement matters, or indeed to follow federal law relating to points of termination. Verizon stated that the FCC clearly delineates carrier responsibilities and points of termination relative to 9-1-1. Verizon stated that the provisions ignore federal law and effectively grant 9-1-1 administrative entities unilateral power to dictate 9-1-1 service migration despite

the fact that carriers bear the responsibility to deploy the facilities that provide 9-1-1 service. Moreover, Verizon stated that these subsections would require carriers to redeploy trunks every time a change is made to the entity managing the system.

Verizon also stated that the provisions require flash-cut elimination of current 9-1-1 routing systems in order to migrate to new systems. Verizon stated that circumstances have arisen around the country where these cuts have been negotiated and planned *without including the carrier responsible for deployment,* which has proven very expensive to the carriers in terms of time and money. Verizon stated that if, for example, PSAPs and carriers connecting to selective routers subsequently enter into contracts for different routing *without consulting the carriers involved,* the result is one that imposes significant additional costs on the carriers to install trunks, sometimes to distant locations. Verizon stated that with unilateral decision making on the part of 9-1-1 administrative agencies, carriers have no guarantee of either involvement in, or advance notice of, code relief efforts. Verizon stated that the proposed provisions eliminate the obligation to negotiate in good faith points of termination and places unilateral discretion in the hands of the 9-1-1 entity.

AT&T stated that it does not object in concept with the authority of the 9-1-1 administrative agency to determine if and when it wants to migrate to next generation solutions. But, AT&T stated that it does not believe the proposed provisions are necessary because 9-1-1 administrative entities already have this authority. AT&T stated that is has concerns about the broad reference to the "removal of unnecessary trunks, circuits, databases, or functions" because there may be disagreements about what constitutes "unnecessary."

The 9-1-1 entities stated that because they and the commission have authority and responsibility for different aspects of 9-1-1 service, it is imperative that these obligations be harmonized and provide checks and balances consistent with protecting the public interest and public safety. Further, the 9-1-1 entities stated that private interests and commercial agreements among private parties under any reasoned reading of statutory construction or the public interest should not hinder, constrain, or abridge the statutory responsibility of 9-1-1 administrative entities. The 9-1-1 entities stated that currently some private company policies, or interconnection or commercial agreements, have resulted in CLECs either voluntarily or involuntarily installing 9-1-1 trunks as part of local interconnection even though the CLEC has represented to the ILEC and the appropriate 9-1-1 administrative entity that such 9-1-1 trunks will not be used in the provision of 9-1-1 service. The 9-1-1 entities stated that such non-use is inconsistent with the 9-1-1 administrative entities' 9-1-1 service agreements, and §26.435 requires reimbursement from the appropriate 9-1-1 administrative agency for those unused dedicated 9-1-1 trunks (assuming other prerequisites in the rule can be demonstrated in such situations).

The 9-1-1 administrative entities also stated that AT&T's comments indicated a need for strong language that resolved its liability concerns related to the dedicated 9-1-1 trunk issue. The 9-1-1 entities stated that impasses have occurred with both AT&T and Verizon - AT&T in the context of providing database information for quality of service purposes, and Verizon in the context of changing of 9-1-1 network service providers. The 9-1-1 entities stated that they agree with including the strong language "subject to the commission's authority and oversight review for 'material' changes." The 9-1-1 entities stated that its proposed changes would enable reasonable budgeting and planning protections not only for 9-1-1 administrative entities but also for CLECs, wireless carriers, VoIP providers, and telematics providers that must connect and interoperate in the best manner feasible and achievable to provide 9-1-1 service to all end-user customers.

The 9-1-1 entities also stated that Verizon's worries about flash cuts are contrary to 9-1-1 practices, as well as 9-1-1 service agreements in Texas, which provide for 180-day notice of changes in 9-1-1 Service Plan requirements unless necessary on an emergency basis to protect public safety.

Commission Response

In adopting new §26.272(e)(1)(B)(vi) and §26.433(i), the commission is not granting 9-1-1 administrative entities some new authority or unilateral discretion. Instead, it is acknowledging that the provisioning of 9-1-1 service is competitive and will become more competitive, and that 9-1-1 administrative entities have the authority to choose how and with whom they provision 9-1-1 network service in their respective areas. These new provisions also provide needed clarity to CTUs concerning the impact of an administrative entity's choice to migrate its 9-1-1 network service to a new provider or to a newer functionally equivalent IP-based system or NG9-1-1 system that may or may not be provided by an ILEC. When a 9-1-1 administrative entity migrates to a new 9-1-1 network service, with the same or a new provider, or approves a new and different 9-1-1 service arrangement for a CTU, it is possible that some or all trunks between a CTU and a 9-1-1 network service provider might become unnecessary or need to be re-provisioned. In such an event, it is not in the public interest for 9-1-1 administrative entities to continue to reimburse carriers for dedicated 9-1-1 trunks that are unnecessary. Additionally, it is not in the public interest to permit 9-1-1 administrative agencies to alter their 9-1-1 service arrangements in a manner that materially changes the way in which such service is provisioned today *(i.e.,* within a LATA), which could dramatically impact a CTU's unreimbursed costs, without an opportunity for affected CTUs to ask for additional reimbursement. Therefore, in such an event, affected trunks should be disconnected or re-provisioned following the procedures established in §26.272(e)(1)(B)(i)(I) for the removal of unnecessary trunks or the re-provisioning of trunks, and with the possibility of additional cost recovery for material changes as provided in §26.435(a).

The commission revises §26.272(e)(1)(B)(vi) and §26.433(i) consistent with the Consensus Revisions.

§26.433(a) Purpose and (b) Application

AT&T stated that, as with its discussion of §26.5(275), the commission should require all 9-1-1 network service providers to be CTUs. AT&T stated that the purpose of the rule is to assure the integrity of the state's emergency 9-1-1 system and the rule accomplishes this purpose by establishing certain network interoperability service quality standards. AT&T stated that unless a 9-1-1 network service provider is certificated, it falls outside the jurisdiction of the commission and will not be required to maintain the standards set by the commission nor will they be subject to commission oversight or enforcement should problems arise. AT&T stated that due to the critical nature of 9-1-1 services, it is of paramount importance that 9-1-1 service providers have the expertise to be able to provide reliable and redundant service and to quickly restore 9-1-1 service whenever it is disrupted. AT&T stated that is unsure why the commission would require certification for database management service providers and yet not require certification for providers of 9-1-1 network

services. AT&T opined that while database services are critically important, the need for expertise regarding network issues and the potential for disruption of 9-1-1 services is even more critical. AT&T stated that for these reasons, 9-1-1 network service providers should be held to CTU standards. AT&T stated that no matter who is the 9-1-1 network service provider, AT&T end-user customers should be confident that access to 9-1-1 service is available when needed. The 9-1-1 entities stated that it agreed AT&T on this issue; 9-1-1 network service providers must be CTUs.

Commission Response

The issue of requiring 9-1-1 network service providers to be CTUs is addressed below with respect to §26.433(c), 9-1-1 service provider certification requirements.

§26.433(c) 9-1-1 service provider certification requirements Intrado stated that the commission's rules should require 9-1-1 network service providers and any other operators of elements of the 9-1-1 system to be certificated, including government operators. Intrado stated that this requirement ensures that the public's safety will be entrusted to reliable and competent entities. Intrado stated that the commission's rules should specifically acknowledge that the commission will certify competitive applicants to provide 9-1-1 database management service and/or 9-1-1 service alone.

AT&T stated that this provision is confusing. AT&T stated that paragraph 1 is simply a rewording of the prior rule language and that paragraph 2 is unclear. AT&T stated it was not clear whether the provision is stating that PSAPs and 9-1-1 administrative entities do not require certification as a 9-1-1 service provider or rather that they are not required to be certificated in order to be PSAPs or 9-1-1 administrative entities. AT&T stated that it objects if the intent is to say that PSAPs and 9-1-1 administrative entities do not require certification if they provide 9-1-1 service and reiterated the objections it made for §26.5(275) and §26.433(a) and (b). AT&T stated that if the provision states that 9-1-1 administrative entities are not required to be certificated in order to be PSAPs or 9-1-1 administrative entities, then it is unnecessary.

The 9-1-1 entities stated that they agree with Intrado and AT&T 9-1-1 network service providers must CTUs.

Commission Response

The commission agrees with Intrado, AT&T and the 9-1-1 entities, the commission's rules should require providers of any element of the 9-1-1 network to be certificated and revises the rule accordingly. The commission also agrees with AT&T, PSAPs and 9-1-1 administrative entities do not require certification by the commission unless acting as a 9-1-1 database management services provider or a 9-1-1 network services provider. This commission adopts the Consensus Revisions.

§26.433(e)(1)(C)

AT&T recommended that the words "tandem" and "IP-based system" be replaced with "9-1-1 tandem" and "IP-based 9-1-1 system." AT&T also questioned why the requirement for a P.01 grade of service was deleted. AT&T stated that it would seem reasonable to maintain the same level of service from the selective router to the PSAP as from the end office to the selective router and recommended re-inserting this language. The 9-1-1 entities stated that they agree with AT&T.

Commission Response

The commission agrees with AT&T and the 9-1-1 entities, and revises the provision consistent with the Consensus Revisions.

§26.433(f)(1)(E)

AT&T questioned the need for this new provision. AT&T stated that the requirement that all CTUs execute agreements with the respective 9-1-1 entities appears out of place in this subsection. AT&T stated that it believes the more appropriate location for this provision is in §26.435, where it was previously located and was included as a prerequisite to receiving cost recovery reimbursement. AT&T also recommended modifications to the language because it could be read to require the remittance of a fee from the CTU, when the fee is the obligation of the end-user customer, not the CTU. AT&T stated that it is the obligation of the CTU to collect the fee from its customer and then remit it to the 9-1-1 administrative entity. The 9-1-1 entities stated that they agree with AT&T and suggested these requirements be moved to a new subsection (j).

Commission Response

The commission agrees with AT&T and the 9-1-1 entities, and revises the provision consistent with the Consensus Revisions.

§26.433(i) Migration of 9-1-1 service

See comments for §26.272(e)(1)(B)(vi).

§26.433(j) 9-1-1 service agreement

The 9-1-1 entities stated that the better location for the requirement that a CTU that provides local exchange service or resold local exchange service execute a separate 911 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authorities is best moved from §26.433(f)(1)(E) to a new §26.433(j).

Commission Response

The commission agrees with the 9-1-1 entities. The commission adds new subsection (j) and deletes subsection (f)(1)(E). This change is consistent with the Consensus Revisions.

§26.435 Cost recovery methods for 9-1-1 dedicated trunks

Verizon stated that given the existence of a competitive market that offers numerous dedicated transport options, it questioned the need to retain §26.435. Verizon stated that if this section is retained, "approved by the appropriate 9-1-1 administrative entity" should be removed from subsection (a), titled Purpose, because the commission is the administrative agency vested with the authority to authorize cost recovery, not the 9-1-1 administrative entity. Verizon also questioned the continued need to set forth recurring and nonrecurring rates in the section. Verizon stated that the non-recurring rates set out in the section have long outlived their usefulness, are far from compensatory, and need to be market based. Verizon stated that it fears that the section unreasonably singles out the ILEC on a total element long run incremental cost (TELRIC) basis. Verizon stated that given the competitive nature of the services offered in the state, there is no need to specify the pricing methodology in a rule. Verizon proposed that §26.435(c)(3)(B) and (C) be deleted and the end of §26.435(c)(3)(D) that states, "the 9-1-1 network services provider shall assess such charges on a TELRIC basis," be deleted as well.

AT&T stated that it is concerned about the interplay between the definition of "dedicated 9-1-1 trunk" in §26.5(64) and §26.435, the 9-1-1 cost recovery rule. In general, AT&T stated that the

proposed changes to the definition of "dedicated 9-1-1 trunk" broaden this definition to include new technologies, but the proposed changes in §26.435 do not modify cost recovery to account for the fact that some newer technology configurations could be much more costly. AT&T also stated that the proposed amendments do not take into consideration the competitive nature of 9-1-1 network service, and that it would be unfair to limit ILECs to cost recovery on a TELRIC basis while other competitor 9-1-1 network service providers could charge market based rates.

AT&T stated that the cost recovery methods set out in this section were written based on the provision of 9-1-1 service by way of the legacy TDM network; therefore, assumptions upon which those cost recovery methods were based may have little or no relation to the manner in which the next generation networks will be established depending on the extent to which the current network architecture changes. AT&T stated that if carriers are required to carry 9-1-1 calls across LATAs and potentially across the state, and particularly if they are not able to self-provision, the costs will be very different from those costs associated with providing access to 9-1-1 in the legacy telephone network. AT&T stated that it is simply not reasonable to apply the same cost recovery methods to these very different network architecture configurations.

AT&T stated that the commission only permits CTUs to recover $39 per month for each dedicated 9-1-1 trunk used to provide 9-1-1 access to its customers. AT&T stated that this rate was established years ago and was not necessarily based on the actual cost to provide access to 9-1-1 services. AT&T stated that it is not objecting to retention of the $39 rate per month for dedicated 9-1-1 time division multiplexed (TDM) trunks, but contended that this requirement must apply only to the traditional TDM network architecture.

AT&T also reiterated its concern about a discriminatory limitation on ILECs to only charge for transport, port usage, and termination at TELRIC rates for components used in the provision of 9-1-1 dedicated trunks. AT&T stated that the proposed limitation has no basis, is discriminatory, and would create a situation where ILECs are subsidizing CLECs' cost of providing 9-1-1 services. In its role as a 9-1-1 network services provider, AT&T is not providing interconnection services requiring the application of TELRIC so there is no legal basis for this requirement. AT&T opined that the TELRIC requirement was originally established because ILECs were the original 9-1-1 network service providers and there was very little, if any, competition. AT&T stated that since the market for 9-1-1 network services is now competitive, the section should allow for market-established rates.

AT&T stated that it agrees with Verizon that the proposed language for §26.435(c)(3) is unreasonably discriminatory. AT&T stated that as it noted in its initial comments, there is no legal basis for this requirement, and as such it is unreasonably discriminatory. AT&T stated that the original rule language that applied TELRIC to all CTUs should be retained. AT&T stated that King County is not applicable because it was applicable to specific wireless service providers in King County.

The 9-1-1 entities stated that they agree with AT&T, that the rules need to be clarified to address and embrace a "materially" different 9-1-1 network architecture that may require separate proceedings or rulemakings in the future. The 9-1-1 entities also stated that current, proposed 9-1-1 network service deployments in Texas do not materially change the current network architecture, and that the "materiality" approach and corresponding caveats in the 9-1-1 rules reasonably address the concerns raised by AT&T and Verizon related to changes to current POIs, LATAs, new long-haul trunking requirements, or new "class-marking" at the 9-1-1 network level. The 9-1-1 entities stated that the materiality and parity approach would also address AT&T' and Verizon's issues with the definition of "9-1-1 dedicated trunk" and TELRIC pricing and obviate the need for any other changes that might be speculative. The 9-1-1 entities stated that they agree with AT&T and Verizon on the issues of parity in cost recovery for 9-1-1 network services and that benchmarking to the ILECs rates, as done in other contexts and for other services, might be an appropriate approach for setting a CLECs rates. The 9-1-1 entities also stated that dedicated 9-1-1 trunks are a general cost of doing business for all carriers; however, the commission's compromise position of equal reimbursement to ILECs and CLECs from Project Number 24305 and Docket Number 22920 should not be revisited at this time absent material changes in circumstances and proposed network architecture.

Commission Response

The commission disagrees with Verizon and declines to delete the language, "approved by the appropriate 9-1-1 administrative entity" in §26.435(a), because it clarifies that a CTU may seek cost recovery only for the dedicated 9-1-1 trunks that are approved by the appropriate 9-1-1 administrative entity. The commission agrees with Verizon, AT&T, and the 9-1-1 entities that the reimbursement rates for dedicated 9-1-1 trunks in §26.435(c)(1) are not compensatory. However, as noted by the 9-1-1 entities, providing access to 9-1-1 has never been nor was it intended to be profitable for telecommunications providers. Instead, it is a cost of doing business. Further, the rates in §26.435(c)(1) were a compromise and provide equal reimbursement to all carriers, and no commenter has stated or provided evidence that under-recovery for the provisioning of dedicated 9-1-1 trunks has become a particularly burdensome problem. Therefore, the commission does not agree that these rates have outlived their usefulness and at this time is not making a change in the reimbursement rates for dedicated 9-1-1 trunks of $165 for non-recurring charges and $39 for recurring charges.

The commission agrees with AT&T and the 9-1-1 entities that the proposed rules do not account for possible material changes in the networking or trunking arrangements necessary for CTUs to provide their end-user customers access to 9-1-1 services. One example provided by AT&T is having fewer selective routers, which could result in not having points of interconnection in each LATA. AT&T claims this change could cause significant increases in a CTU's costs for provisioning dedicated 9-1-1 trunks because a CTU could have to extend a trunk, line, or link a long distance to reach a selective router. However, the commission concludes that it is premature to address this issue. There could be changes in technology that accompany the architectural changes described by AT&T that have the effect of keeping costs down. However, consistent with the Consensus Revisions, the commission revises §26.435(a) to include a process whereby a telecommunications provider can petition the commission for additional cost recovery.

The commission agrees with Verizon, AT&T, and the 9-1-1 entities that ILECs should not be singled out with regard to TELRIC-based charges for facilities provided by them if they are the 9-1-1 network service providers. Therefore, consistent with the Consensus Revisions and the existing section, the commission

revises the section to provide that any CTU that is the 9-1-1 network service provider must assess charges on a TELRIC basis.

§26.435(c) 9-1-1/CTU Reimbursement

AT&T stated that it does not object to retaining the rates set out, as long as they only apply to the provision of 9-1-1 access through the traditional TDM network.

Commission Response

The commission agrees with AT&T and revises the provision accordingly. This revision is consistent with the Consensus Revisions.

§26.435(c)(3)(B)

AT&T reiterated its argument that restricting ILEC 9-1-1 network services providers to cost recovery at TELRIC based rates while permitting other carriers to charge market based rates for the same services is unreasonably discriminatory and would create a situation where ILECs were subsidizing CLEC's cost or providing 9-1-1 service to their end users. AT&T stated that it is not providing interconnection services requiring the application of TELRIC, so there is no legal basis for this requirement.

Commission Response

Consistent with AT&T's comments, the Consensus Revisions and the existing provision, the commission revises the provision to provide that any CTU that is the 9-1-1 network service provider must assess charges on a TELRIC basis.

§26.435(c)(3)(C)

AT&T stated that restricting ILEC 9-1-1 network services providers to cost recovery at TELRIC based rates while permitting other carriers to charge market based rates for the same services is unreasonably discriminatory and would create a situation where ILECs were subsidizing CLEC's cost of providing 9-1-1 service to their end users. AT&T stated that it is not providing interconnection services requiring the application of TELRIC so there is no legal basis for this requirement.

Commission Response

Consistent with AT&T's comments, the Consensus Revisions and the existing provision, the commission revises the provision to provide that any CTU that is the 9-1-1 network service provider must assess charges on a TELRIC basis.

§26.435(c)(3)(D)

AT&T stated that restricting ILECs to cost recovery at TELRIC based rates for providing 9-1-1 network services while permitting other carriers to charge market based rates is unreasonably discriminatory and would create a situation where the ILECs were subsidizing the CLECs cost of providing 9-1-1 service to their end users. AT&T stated that it is not providing interconnection services requiring the application of TELRIC so there is no legal basis for this requirement.

Commission Response

Consistent with AT&T's comments, the Consensus Revisions and the existing provision, the commission revises the provision to provide that any CTU that is the 9-1-1 network service provider must assess charges on a TELRIC basis.

§26.435(c)(8)

AT&T stated that it objects to exempting IP-based systems of next generation 9-1-1 systems from the requirement addressing areas administered by multiple 9-1-1 administrative entities and would request clarification as to the basis for the exemption. AT&T stated that it is not clear what the network arrangements would be in the case of an IP or next generation solution.

Commission Response

The commission agrees with AT&T and revises the provision accordingly. This revision is consistent with the Consensus Revisions.

§26.435(c)(9)

AT&T stated that this paragraph is confusing and requested clarification.

Commission Response

The commission agrees with AT&T and revises this provision accordingly. This revision is consistent with the Consensus Revisions.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.5

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §60.001, which authorizes the commission to ensure that the rates and rules of an incumbent local exchange carrier are not unreasonably preferential, prejudicial, or discriminatory; and are applied equitably and consistently; PURA §60.122, which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; §60.124, which requires each telecommunications provider to maintain interoperable networks; §64.051, which requires the commission to adopt rules relating to certification, registration, and reporting requirements of a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers; §64.052(3), which permits the commission to adopt and enforce rules for customer service and protection; §64.053, which states the commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under PURA Chapter 64; and PURA §60.210 which requires all telecommunications providers to provide access to 911 and E-911 services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 60.001, 60.122, 60.124, 60.210, 64.051, 64.052(3), and 64.053.

§26.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Access customer--Any user of access services which are obtained from a certificated telecommunications utility (CTU).

(2) Access services--CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.

(3) Administrative review--A process under which an application may be approved without a formal hearing.

(4) Affected person--means:

(A) a public utility affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(5) Affiliate--means:

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(6) Aggregate customer proprietary network information (CPNI)--A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.

(7) Alternate 9-1-1 routing--The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.

(8) Assumed name--Has the meaning assigned by Texas Business and Commerce Code, §36.10.

(9) Automatic dial announcing device (ADAD)--Any automated equipment used for telephone solicitation or collection that:

(A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and

(B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.

(10) Automatic location identification (ALI)--The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.

(11) Automatic number identification (ANI)--The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.

(12) Base rate area--A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.

(13) Basic local telecommunications service--Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

(14) Basic network services (BNS)--Those services identified in Public Utility Regulatory Act §58.051.

(15) Baud--Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.

(16) Bellcore--Bell Communications Research, Inc.

(17) Billing agent--Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.

(18) Billing telecommunications utility--Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.

(19) Bit Error Ratio (BER)--The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.

(20) Bit Rate--The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.

(21) Bona fide request--A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

(22) Business service--A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.

(23) Busy hour--The clock hour each day during which the greatest usage occurs.

(24) Busy season--That period of the year during which the greatest volume of traffic is handled in a switching office.

(25) Call aggregator--Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.

(26) Call splashing--Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.

(27) Call transferring--Handing off a call from one operator service provider (OSP) to another OSP.

(28) Caller identification materials (caller ID materials)--Any advertisements, educational materials, training materials, audio

and video marketing devices, and any information disseminated about caller ID services.

(29) Caller identification service (caller ID service)--A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

(30) Calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(31) Calling party information--

(A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or

(B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

(32) Capitalization--Long-term debt plus total equity.

(33) Carrier of choice--An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.

(34) Carrier-initiated change--A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(35) Central office--A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

(36) Census block group (CBG)--A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.

(37) Certificated service area--The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

(38) Certificated telecommunications utility--A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.

(39) Class of service or customer class--A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.

(40) Commercial mobile radio service (CMRS)--

(A) As defined in 47 C.F.R. §20.3, a mobile service that is:

(i) provided for profit with, *i.e.,* the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.

(41) Commission--The Public Utility Commission of Texas.

(42) Commission on State Emergency Communications (CSEC)--The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.

(43) Competitive exchange service--Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

(44) Competitive services (CS)--Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.

(45) Completed call--A call that is answered by the called party.

(46) Complex service--The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.

(47) Consumer good or service--

(A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;

(B) A cemetery lot;

(C) A time-share estate; or

(D) A service related to real or personal property.

(48) Consumer telephone call--An unsolicited call made to a residential telephone number to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(49) Cooperative--An incumbent local exchange company that is a cooperative corporation.

(50) Cooperative corporation--

(A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or

(B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.

(51) Corporate name--Has the meaning assigned by Texas Business Corporation Act, Article §2.05.

(52) Corporation--A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

(53) Custom calling-type services--Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.

(54) Customer access line--A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.

(55) Customer-initiated change--A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(56) Customer premises equipment (CPE)--Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

(57) Customer proprietary network information (CPNI), customer-specific--Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics *(e.g.,* rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(58) Customer trouble report--Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(59) dBrn--A unit used to express noise power relative to one Pico watt (-90 dBm).

(60) dBrnC--Noise power in dBrn, measured with C-message weighting.

(61) dBrnCO--Noise power in dBrnC referred to or measured at a zero transmission level point.

(62) D-Channel--The integrated-services-digital-network out-of-band signaling channel.

(63) Dedicated signaling transport--Transmission of out-of-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.

(64) Dedicated 9-1-1 trunk--Refers to either:

(A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or

(B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect dedicated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.

(65) Default routing--The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.

(66) Depreciation expenses--The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

(67) Direct-trunked transport--Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.

(68) Disconnection of telephone service--The event after which a customer's telephone number is deleted from the central office switch and databases.

(69) Discretionary services (DS)--Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.

(70) Distance learning--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.

(71) Distribution lines--Those lines from which the end user may be provided direct service.

(72) Dominant carrier--A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who pro-

vided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

(73) Dominant certificated telecommunications utility (DCTU)--A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.

(74) Dual-party relay service--A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.

(75) Educational institution--Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(76) Electing local exchange company (LEC)--A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.

(77) Electric utility--Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(78) Element--Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.

(79) Eligible telecommunications provider (ETP) service area--The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(80) Embedded customer premises equipment--All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.

(81) Emergency service number (ESN)--A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.

(82) Emergency service zone (ESZ)--A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.

(83) End user choice--A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.

(84) Enhanced service provider--A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.

(85) Entrance facilities--The transmission path between the access customer's (such as an interexchange carrier's) point of demarcation and the serving wire center.

(86) Equal access--Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.

(87) Exchange area--The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.

(88) Expenses--Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.

(89) Experimental service--A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

(90) Extended area service (EAS)--A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

(91) Extended local calling service (ELCS)--Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(92) E911 or E9-1-1--9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.

(93) Facilities--All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.

(94) Facilities-based provider--A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.

(95) Foreign exchange (FX)--Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.

(96) Foreign serving office (FSO)--Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

(97) Forward-looking common costs--Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.

(98) Forward-looking economic cost--The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.

(99) Forward-looking economic cost per unit--The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.

(100) Geographic scope--The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.

(101) Grade of service--The number of customers a line is designated to serve.

(102) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(103) Hearing carryover--A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.

(104) High cost area--A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.

(105) High cost assistance (HCA)--A program administered by the commission in accordance with the provisions of §26.403 of this title.

(106) Identity--The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

(107) Impulse noise--Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.

(108) Incumbent local exchange company (ILEC)--A local exchange company that had a CCN on September 1, 1995.

(109) Informational notice--That notice required to be filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility pursuant to Public Utility Regulatory Act Chapters 52, 58, or 59.

(110) Information sharing program--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(111) Integrated services digital network (ISDN)--A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(112) Interactive multimedia communications--Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(113) Intercept service--A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

(114) Interconnection--Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating

to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.

(115) Interconnector--A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).

(116) Interexchange carrier (IXC)--A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

(A) the furnishing, or furnishing and maintenance of a private system;

(B) the manufacture, distribution, installation, or maintenance of customer premises equipment;

(C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or

(D) the provision of shared tenant service.

(117) Internet Protocol (IP)--A data communication protocol used in communicating data from one computer to another on the Internet or other networks.

(118) Interoffice trunks--Those communications circuits which connect central offices.

(119) IntraLATA equal access--The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.

(120) Intrastate--Refers to communications which both originate and terminate within Texas state boundaries.

(121) Least cost technology--The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) be consistent with overall network design and topology requirements.

(122) License--The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(123) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(124) Lifeline Service--A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

(125) Line--A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(126) Local access and transport area (LATA)--A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.

(127) Local call--A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.

(128) Local calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(129) Local exchange carrier (LEC)--A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

(130) Local exchange telephone service or local exchange service--A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services;

(J) a competitive exchange service; or

(K) any other service the commission determines is not a "local exchange telephone service."

(131) Local message--A completed call between customer access lines located within the same local calling area.

(132) Local message charge--The charge that applies for a completed telephone call that is made when the calling customer access

line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(133) Local service charge--The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.

(134) Local telecommunications traffic--

(A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(135) Long distance telecommunications service--That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(136) Long run--A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(137) Long run incremental cost (LRIC)--The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.

(138) Mandatory minimum standards--The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.

(139) Master street address guide (MSAG)--A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.

(140) Meet point billing--An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.

(141) Message--A completed customer telephone call.

(142) Message rate service--A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(143) Minor change--A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 10%.

(144) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(145) National integrated services digital network (ISDN)--The standards and services promulgated for integrated services digital network by Bellcore.

(146) Negotiating party--A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.

(147) Next generation 9-1-1 system (NG9-1-1 system)--A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for public safety answering positions and other emergency service organizations.

(148) New service--Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.

(149) Nonbasic services--Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.

(150) Non-discriminatory--Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.

(151) Non-dominant certificated telecommunications utility (NCTU)--A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.

(152) Nondominant carrier--

(A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier;

(ii) any other reseller of communications;

(iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or

(iv) a provider of operator services that is not also a subscriber.

(153) North American Numbering Plan (NANP)--Use of 10-digit dialing in the format of a 3-digit "NPA" followed by a 3-digit "NXX" and a 4-digit line number, NPA-NXX-XXX.

(154) Numbering plan area (NPA)--The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.

(155) NXX--A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing

the "Exchange Code" fields of a North American Numbering Plan telephone number.

(156) Open network architecture--The overall design of an ILEC's network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(157) Operator service--Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(158) Operator service provider (OSP)--Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

(159) Originating line screening (OLS)--A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.

(160) Out-of-service trouble report--An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(161) P.01 grade of service--A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy house will be blocked."

(162) Partial deregulation--The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.

(163) Pay-per-call-information services--Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

(164) Pay telephone access service (PTAS)--A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

(165) Pay telephone service (PTS)--A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(166) Per-call blocking--A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.

(167) Per-line blocking--A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

(168) Percent interstate usage (PIU)--An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.

(169) Person--Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(170) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(171) Prepaid local telephone service (PLTS)--Prepaid local telephone service means:

(A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;

(B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;

(C) tone dialing service;

(D) access to 911 service;

(E) access to dual party relay service;

(F) the ability to report service problems seven days a week;

(G) access to business office;

(H) primary directory listing;

(I) toll blocking service; and

(J) non-published service and non-listed service at the customer's option.

(172) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(173) Pricing flexibility--Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

(A) customer specific contracts;

(B) volume, term, and discount pricing;

(C) zone density pricing;

(D) packaging of services; and

(E) other promotional pricing flexibility.

(174) Primary interexchange carrier (PIC)--The provider chosen by a customer to carry that customer's toll calls.

(175) Primary interexchange carrier (PIC) freeze indicator--An indicator that the end user has directed the CTU to make no changes in the end user's PIC.

(176) Primary rate interface (PRI) integrated services digital network (ISDN)--One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.

(177) Primary service--The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

(178) Print translations--The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(179) Privacy issue--An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:

(A) the type of information about a customer that is released;

(B) the customers about whom information is released;

(C) the entity or entities to whom the information about a customer is released;

(D) the technology used to convey the information;

(E) the time at which the information is conveyed; and

(F) any other change in the collection, use, storage, or release of information.

(180) Private line--A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(181) Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.

(182) Promotional rate--A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

(183) Provider of pay telephone service--The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.

(184) Public safety answering point (PSAP)--A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772.

(185) Public utility or utility--A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(186) Public Utility Regulatory Act (PURA)--The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 66.016, (Vernon 2007, Supplement 2010).

(187) Qualifying low-income consumer--A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(188) Qualifying services--

(A) residential flat rate basic local exchange service;

(B) residential local exchange access service; and

(C) residential local area calling usage.

(189) Rate--Includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(190) Reciprocal compensation--An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

(191) Reclassification area--The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.

(192) Redirect the call--A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.

(193) Regional planning commission--The meaning established in Texas Health and Safety Code §771.001(10).

(194) Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.

(195) Relay Texas Advisory Committee (RTAC)--The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.

(196) Relay Texas--The name by which telecommunications relay service in Texas is known.

(197) Relay Texas administrator--The individual employed by the commission to oversee the administration of statewide telecommunications relay service.

(198) Repeated trouble report--A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(199) Residual charge--The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(200) Retail service--A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(201) Return-on-assets--After-tax net operating income divided by total assets.

(202) Reversal of partial deregulation--The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

(203) Rule--A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(204) Rulemaking proceeding--A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.

(205) Rural incumbent local exchange company (ILEC)--An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(206) Selective routing--The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.

(207) Selective transfer--A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.

(208) Separation--The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(209) Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(210) Service connection charge--A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(211) Service order system--The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.

(212) Service provider--Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.

(213) Service provider certificate of operating authority (SPCOA) reseller--A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.

(214) Service restoral charge--A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(215) Serving wire center (SWC)--The CTU designated central office which serves the access customer's point of demarcation.

(216) Signaling for tandem switching--The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(217) Small certificated telecommunications utility (CTU)--A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(218) Small local exchange company (SLEC)--Any incumbent CTU as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(219) Small incumbent local exchange company (Small ILEC)--An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas.

(220) Spanish speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(221) Special access--A transmission path connecting customer designated premises to each other either directly or through a

hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(222) Specialized Telecommunications Assistance Program (STAP)--The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).

(223) Specialized Telecommunications Assistance Program (STAP) voucher--A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(224) Stand-alone costs--The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(225) Station--A telephone instrument or other terminal device.

(226) Study area--An incumbent local exchange company's (ILEC's) existing service area in a given state.

(227) Supplemental services--Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.

(228) Suspension of service--That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(229) Switched access--Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.

(230) Switched access demand--Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(231) Switched access minutes--The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(232) Switched transport--Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(233) Tandem-switched transport--Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.

(234) Tariff--The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(235) Telecommunications provider--As defined in the Public Utility Regulatory Act §51.002(10).

(236) Telecommunications relay service (TRS)--A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(237) Telecommunications relay service (TRS) carrier--The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(238) Telecommunications utility--

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and

(G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(239) Telephones intended to be utilized by the public--Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(240) Telephone solicitation--An unsolicited telephone call.

(241) Telephone solicitor--A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(242) Test year--The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(243) Texas Universal Service Fund (TUSF)--The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(244) Tier 1 local exchange company--A local exchange company with annual regulated operating revenues exceeding $100 million.

(245) Title IV-D Agency--The office of the attorney general for the state of Texas.

(246) Toll blocking--A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(247) Toll control--A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(248) Toll limitation--Denotes both toll blocking and toll control.

(249) Total element long-run incremental cost (TELRIC)--The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.

(250) Transport--The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.

(251) Trunk--A circuit facility connecting two switching systems.

(252) Two-primary interexchange carrier (Two-PIC) equal access--A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(253) Unauthorized charge--Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(254) Unbundling--The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(255) Unit cost--A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(256) Usage sensitive blocking--Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(257) Virtual private line--Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(258) Voice carryover--A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(259) Voice over Internet Protocol (VoIP)--The technology used to transmit voice communications using Internet Protocol.

(260) Volume insensitive costs--The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(261) Volume sensitive costs--The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(262) Wholesale service--A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(263) Working capital requirements--The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(264) "0-" call--A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(265) "0+" call--A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(266) 311 answering point--A communications facility that:

(A) is operated, at a minimum, during normal business hours;

(B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(C) is the first point of reception by a governmental entity of a 311 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(267) 311 service--A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(268) 311 service request--A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:

(A) be in writing;

(B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;

(C) contain an outline from the governmental entity for implementation of 311 service;

(D) contain a description of the likely source of funding for the 311 service (*i.e.*, from general revenues, special appropriations, etc.); and

(E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(269) 311 system--A system of processing 311 calls.

(270) 9-1-1 administrative entity--A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).

(271) 9-1-1 database management services provider--An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.

(272) 9-1-1 database services--Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.

(273) 9-1-1 network services--Services purchased by a 9-1-1 administrative entity that route 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-1-1 system, Internet Protocol-

based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.

(274) 9-1-1 network services provider--A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.

(275) 911 system--A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.

(276) 9-1-1 selective routing tandem switch--A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.

(277) 9-1-1 service--As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).

(278) 9-1-1 service agreement--A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.

(279) 9-1-1 service arrangement--Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.272

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §60.001, which authorizes the commission to ensure that the rates and rules of an incumbent local exchange carrier are not unreasonably preferential, prejudicial, or discriminatory; and are applied equitably and consistently; PURA §60.122, which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; §60.124, which requires each telecommunications provider to maintain interoperable networks; §64.051, which requires the commission to adopt rules relating to certification, registration, and reporting requirements of a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers; §64.052(3), which permits the commission to adopt and enforce rules for customer service and protection; §64.053, which states the commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under PURA Chapter 64; and PURA §60.210 which requires all telecommunications providers to provide access to 911 and E-911 services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 60.001, 60.122, 60.124, 60.210, 64.051, 64.052(3), and 64.053.

§26.272. Interconnection.

(a) Purpose. The purpose of this section is to ensure that all providers of telecommunications services which are certificated to provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintain interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest.

(b) Definition. The term "customer" when used in this section, shall mean an end-user customer.

(c) Application and Exceptions.

(1) Application. This section applies to all certificated telecommunications utilities (CTUs) providing local exchange service.

(2) Exceptions. Except as herein provided, all CTUs providing local exchange service must comply with the requirements of this section.

(A) Holders of a service provider certificate of operating authority (SPCOA).

(i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU shall be subject only to the requirements of subsection (e)(1)(B)(ii) and (D)(i) - (vii) of this section and subsection (i)(1) - (3) of this section.

(ii) The underlying CTU providing service to the holder of an SPCOA referenced in subparagraph (A)(i) of this paragraph shall comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

(i) This section shall apply to small ILECs to the extent required by 47 United States Code §251(f) (1996).

(ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs shall terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

(i) This section shall also apply to rural telephone companies as defined in 47 United States Code §153 (1996) to the extent required by 47 United States Code §251(f) (1996).

(ii) Rural telephone companies shall terminate traffic of a CTU which originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone com-

pany has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section pursuant to 47 United States Code §251(f)(2) (1996).

(ii) Small CTUs shall terminate traffic of a CTU which originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(d) Principles of interconnection.

(1) General principles.

(A) Interconnection between CTUs shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.

(B) Interconnection between CTUs shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

(C) A CTU may not unreasonably:

(i) discriminate against another CTU by refusing access to the local exchange;

(ii) refuse or delay interconnections to another CTU;

(iii) degrade the quality of access provided to another CTU;

(iv) impair the speed, quality, or efficiency of lines used by another CTU;

(v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or

(vi) refuse or delay access by any person to another CTU.

(D) Interconnecting CTUs shall negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required pursuant to this section.

(E) This section should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.

(2) Technical interconnection principles. Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), §26.54 of this title (relating to Service Objectives and Performance Benchmarks), §26.55 of this title (relating to Monitoring of Service), §26.57 of this title (relating to Requirements for a Certificate Holder's Use of an Alternate Technology to Meet Its Provider of Last Resort Obligation), §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers), §26.107 of this title (relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers), §26.128 of this title (relating to Telephone Directories), §26.206 of this title (relating to Depreciation Rates), and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

(A) Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection.

(B) Interconnecting CTUs shall provide each other nondiscriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.

(D) Interconnecting CTUs shall be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access and transport area (LATA), as requested by the interconnecting CTU, and may negotiate with the other CTU for additional interconnection points. Interconnecting CTUs shall agree to construct and/or lease and maintain the facilities necessary to connect their networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect their networks. The financial responsibility for construction and maintenance of such facilities shall be borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU shall be responsible for delivering its originating traffic to the mutually-agreed-upon point of interconnection or points of interconnection. Nothing herein precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are used by other CTUs.

(E) Interconnecting CTUs shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each CTU shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §26.53 of this title.

(F) If a CTU has sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport shall not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

(G) Each interconnecting CTU shall be responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

(H) Interconnecting CTUs shall allow each other nondiscriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and/or appropriate governmental authority.

(I) Interconnecting CTUs shall provide each other physical interconnection in a non-discriminatory manner. Physical

collocation for the transmission of local exchange traffic shall be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented at the option of the CTU requesting the interconnection.

(J) Each interconnecting CTU shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

(3) Principles regarding billing arrangements.

(A) Interconnecting CTUs shall cooperatively provide each other with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records shall be provided in accordance with national industry standards. For billing interexchange carriers for jointly provided switched access services, such billing records shall include meet point billing records, interexchange carrier (IXC) billing name, IXC billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, interconnecting CTUs shall negotiate a mutually acceptable settlement process for billing IXCs for jointly provided switched access services.

(B) CTUs shall enter into mutual billing and collection arrangements that are comparable to those existing between and/or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.

(C) Upon a customer's selection of a CTU for his or her local exchange service, that CTU shall provide notification to the primary IXC through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information should include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU shall provide notification to the primary IXC of such disconnection.

(D) All CTUs shall cooperate with IXCs to ensure that customers are properly billed for IXC services.

(4) Principles regarding interconnection rates, terms, and conditions.

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions shall not be unreasonably preferential, discriminatory, or prejudicial, and shall be non-discriminatory. The following criteria shall be used to establish interconnection rates, terms, and conditions.

(i) Local traffic of a CTU which originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall be terminated by the CTU at local interconnection rates. The local interconnection rates under this subclause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

(ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU shall receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

(iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs shall terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, DCTUs shall terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(v) A DCTU with more than one million access lines and a NCTU shall negotiate new EAS arrangements in accordance with the following requirements.

(I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title, the DCTU shall negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU shall negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(III) A NCTU shall have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area.

(vi) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.

(B) Establishment of rates, terms, and conditions.

(i) CTUs involved in interconnection negotiations shall ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU shall reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions shall be established pursuant to the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies shall be required from a new CTU.

(ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed interconnection rates approved for a larger ILEC, it shall file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

(C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, and/or conditions shall be made publicly available as provided in subsection (h) of this section.

(e) Minimum interconnection arrangements.

(1) Pursuant to mutual agreements, interconnecting CTUs shall provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions shall apply:

(A) Repair services. For purposes of this section, a CTU shall be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, or provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, and/or any combination of 9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) As a prerequisite to providing local exchange telephone service to any customer or any other service whereby a customer may dial 9-1-1 and thereafter, a CTU must meet the following requirements.

(I) The CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement(s), and subject to the written process for documenting "unnecessary dedicated 9-1-1 trunks" in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) The CTU is responsible for enabling all its customers to dial the three digits 9,1,1 to access 9-1-1 service.

(III) The CTU is responsible for providing the ANI to the appropriate CTU operating the 'E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD)(a component of the traditional 9-1-1 signaling protocol that identifies 1 of 4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.

(IV) The CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate 'E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs, as applicable, based on the ANI and/or ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, shall provide specifications to the CTU for routing purposes.

(V) The CTU is responsible for providing the ALI for each of its customers. The ALI shall consist of the calling customer name, physical location, appropriate emergency service providers, and other similar standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data not part of the standard ALI location record.

(ii) Each CTU shall timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished (nonpublished), and unlisted (nonlisted) information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.

(II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider shall be maintained in a fashion to ensure that it is accurate at a percentage as close to 100% as possible. "Accurate" means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. "Percentage" means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU shall not be held responsible for erroneous information provided to it by a customer or another CTU.

(III) Interconnecting CTUs shall execute confidentiality agreements with each other, as necessary, to prevent the unauthorized disclosure of unpublished/unlisted numbers. Interconnecting CTUs shall be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity shall provide non-discriminatory access to the master street address guide.

(iii) Each CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entities. This plan shall identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions shall be the efficient and timely restoration of 9-1-1 service. Each CTU shall notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

(iv) Interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a public safety answering point shall be presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate

9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

(I) For purposes of this clause, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(II) Subclause (I) of this clause is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Subclause (I) of this clause is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(C) Operator services. Interconnecting CTUs shall negotiate to ensure the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. Interconnecting CTUs shall negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) The telephone numbers and other appropriate information of the customers of NCTUs shall be included on a non-discriminatory basis in the DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided by a NCTU to its customers shall have corresponding DCTU listings available on a non-discriminatory basis. The entries of NCTU customers in the DCTU white pages telephone directory shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and shall be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Listings of all customers located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) CTUs shall provide directory listings and related updates to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU or to any CTU providing directory assistance, in a timely manner to ensure inclusion in the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) CTUs shall, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. CTUs shall not provide listings of subscribers desiring non-listed status for publication purposes.

(v) White pages telephone directories shall be distributed to all customers located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or its affiliate publishing the white pages telephone directory.

(vi) A CTU or its affiliate that publishes a white pages telephone directory on behalf of the CTU shall provide a single page per CTU in the information section of the white pages telephone directory, for the CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages shall be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory shall be subject to negotiations.

(vii) CTUs must provide information that identifies customers desiring non-listed and/or non-published telephone numbers and/or non-published addresses to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not divulge such non-listed and/or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database shall not divulge such non-published telephone numbers or addresses.

(viii) CTUs shall provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs shall negotiate to ensure the following:

(A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability between networks and the efficient, timely provision of service to customers;

(B) non-discriminatory access to Telecommunications Relay Service;

(C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;

(D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;

(E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, but not limited to, 900 and 976 calls;

(G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;

(H) cooperative engineering, operations, maintenance and billing practices and procedures; and

(I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) Negotiations.

(1) CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, each CTU requesting interconnection shall negotiate with each CTU or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to the customers of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;

(C) provide any other material necessary to support the request, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the requesting CTU.

(4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

(5) The CTU or negotiating party from which interconnection is sought shall respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;

(C) provide any other material necessary to support the response, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the responding party.

(6) At any point during the negotiations required under this subsection, any CTU or negotiating party may request the commission designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) Interconnecting CTUs may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this section shall not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) Compulsory arbitration process.

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, and/or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. In order to initiate the arbitration procedure, a negotiating CTU:

(A) shall file its petition with the commission during the period from the 135th to the 160th day (inclusive) after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;

(B) shall provide the identity of each CTU and/or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;

(C) shall provide all relevant documentation concerning the unresolved issues;

(D) shall provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;

(E) shall provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and

(F) shall send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.

(3) The compulsory arbitration process shall be completed not later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.

(4) Any disputes arising under or pertaining to arbitrated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E of this title.

(h) Filing of rates, terms, and conditions.

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within ten days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within ten days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.

(C) The commission shall reject an agreement (or any portion thereof) adopted by negotiation if it finds that:

(i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(D) The commission shall reject an agreement (or any portion thereof) adopted by compulsory arbitration, under subsection (g) of this section, pursuant to guidelines found in 47 United States Code §252(e)(2)(B) (1996).

(E) The commission shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph shall not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement pursuant to 47 United States Code §251 (1996).

(2) Rates, terms and/or conditions among DCTUs. Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between and/or among DCTUs which relate to interconnection arrangements for similar traffic shall be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement shall be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) Customer safeguards.

(1) Requirements for provision of service to customers. Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).

(2) Requirements for CTUs ceasing operations. In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the commission and all of the CTU's customers at least 61 working days in advance that their service will be terminated. The notification shall include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.

(3) Requirements for service installations. DCTUs that interconnect with NCTUs shall be responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs shall make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders shall be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders shall be completed in no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTUs' resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU shall complete service orders within 30 calendar days from request of service, unless a later date is agreed to by the customer.

(D) The DCTU shall not discriminate between its customers and NCTUs if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER Q. 9-1-1 ISSUES

16 TAC §§26.431, 26.433, 26.435

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §60.001, which authorizes the commission to ensure that the rates and rules of an incumbent local exchange carrier are not unreasonably preferential, prejudicial, or discriminatory; and are applied equitably and consistently; PURA §60.122, which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; §60.124, which requires each telecommunications provider to maintain interoperable networks; §64.051, which requires the commission to adopt rules relating to certification, registration, and reporting requirements of a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers; §64.052(3), which permits the commission to adopt and enforce rules for customer service and protection; §64.053, which states the commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under PURA Chapter 64; and PURA §60.210 which requires all telecommunications providers to provide access to 911 and E-911 services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 60.001, 60.122, 60.124, 60.210, 64.051, 64.052(3), and 64.053.

§26.431. Monitoring of Certain 911 Fees.

(a) Purpose. The purpose of this section is to implement the commission's statutory requirement to monitor the fees the Commission on State Emergency Communications (CSEC) establishes and the allocation of the revenues from such fees pursuant to Texas Health and Safety Code §§771.071, 771.072, and 771.0725.

(b) CSEC shall:

(1) provide documentation to the commission regarding the rate for the fees authorized in Texas Health and Safety Code §771.071 and §771.072, and the allocation of revenue pursuant to §771.072(d) and (e) including, but not limited to, documentation from each regional planning commission or other public agency designated by the regional planning commission to provide 9-1-1 service;

(2) complete direct mail notice, no later than the fifteenth day after providing its documentation to the commission, to the municipalities and counties whose 9-1-1 service fees are established by CSEC; and

(3) publish in the *Texas Register* notice of its proposed rates and allocation of revenue, no later than the fifteenth day after CSEC provides its documentation to the commission.

(c) Interested parties shall file, not later than 45 days after CSEC publishes notice in the *Texas Register,* comments on CSEC's documentation and on the appropriateness of the rates for each fee and the allocation of the revenue pursuant to Texas Health and Safety Code §771.072(d).

(d) The commission will review the documentation, rates and revenue allocations provided by CSEC and any comments submitted. If the commission determines that a proposed rate or allocation is not appropriate, it shall provide comments to CSEC, the governor, and the Legislative Budget Board within 120 days of CSEC's' initial filing. The commission's comments shall explain its concerns, if any.

(e) The commission may review and make comments regarding a rate or allocation under this section in an informal proceeding. A proceeding in which a rate or allocation is reviewed is not a contested case for purposes of Texas Government Code, Chapter 2001. A review of a rate or allocation is not a rate change for purposes of Texas Utilities Code, Chapter 36 or 53.

§26.433. Roles and Responsibilities of 9-1-1 Service Providers.

(a) Purpose. The provisions of this section are intended to assure the integrity of the state's emergency 9-1-1 system in the context of a competitive and technologically evolving telecommunications market. In particular this section establishes specific reporting and notification requirements and mandates certain minimum network interoperability, service quality standards, and database integrity standards. The requirements in this section are in addition to the applicable interconnection requirements required by §26.272 of this title (relating to Interconnection).

(b) Application. This section applies to all certificated telecommunications utilities (CTUs).

(c) 9-1-1 service provider certification requirements.

(1) Only a CTU may be a 9-1-1 database management services provider.

(2) Only a CTU may be a 9-1-1 network services provider.

(3) Unless acting as a 9-1-1 database management services provider or 9-1-1 network services provider, PSAPs and 9-1-1 administrative entities do not require certification by the commission.

(d) Requirement to prepare plan and reporting and notification requirements.

(1) Network Services Plan. Before providing service, a 9-1-1 network services provider shall prepare and file with the commission a network services plan. The plan shall be updated upon a change affecting a 9-1-1 administrative entity or entities, a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission pursuant to this section believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The network services plan shall include:

(A) a description of the network services and infrastructure for equipment and software being used predominantly for the purpose of providing 9-1-1 services, including but not limited to, alternate routing, default routing, central office identification, and selective routing, ESN, and transfer information;

(B) a schematic drawing and maps illustrating current 9-1-1 network service arrangements specific to each 9-1-1 administrative entity's jurisdiction for each applicable rate center, city, and county. The maps shall show the overlay of rate center, county, and city boundaries; and

(C) a schedule of planned network upgrades and modifications that includes an explanation of 9-1-1 customer premises equipment implications, if any, related to upgrades and modifications.

(2) Database Services Plan. Before providing service, a 9-1-1 database management services provider shall prepare and file with the commission a database services plan. The plan shall be updated upon a change affecting a 9-1-1 administrative entity or entities, a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission pursuant to this section believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The database services plan shall include:

(A) a narrative description of the current database services provided, including but not limited to a description of current 9-1-1 database management service arrangements and each NPA/NXX by selective router served by the database management services provider;

(B) a schematic drawing and maps of current 9-1-1 database service arrangements specific to the applicable agency's jurisdiction for each applicable rate center, city, and county. The maps shall show the overlay of rate center, county, and city boundaries;

(C) a current schedule of planned database management upgrades and modifications, including software upgrades;

(D) an explanation of 9-1-1 customer premises equipment implications, if any, related to any upgrades and modifications referenced in subparagraph (C) of this paragraph; and

(E) a description of all database contingency plans for 9-1-1 emergency service.

(3) Other notification requirements. A CTU shall notify all affected 9-1-1 administrative entities at least 30 days prior to activating or using a new NXX in a rate center or upon the commencement of providing local telephone service in any rate center.

(e) Network interoperability and service quality requirements. In order to ensure network interoperability and a consistent level of service quality the following standards shall apply.

(1) A CTU operating in the state of Texas shall:

(A) Participate, as technically appropriate and necessary, in 9-1-1 network and 9-1-1 database modifications; including, but not limited to, those related to area code relief planning, 9-1-1 tandem reconfiguration, and changes to the 9-1-1 network services or database management services provider.

(B) Notify and coordinate changes to the 9-1-1 network and database with, as necessary and appropriate, its wholesale customers, all affected 9-1-1 administrative entities, and CSEC.

(C) Provide a P.01 grade of service, or its equivalent as applicable, on the direct dedicated 9-1-1 trunk groups.

(D) The 9-1-1 network services provider shall provide a P.01 grade of service, or its equivalent as applicable, to the PSAP.

(E) Apprise all affected 9-1-1 administrative entities of any failure to meet the P.01 grade of service, or its equivalent as applicable, in writing and correct any degradation within 60 days.

(2) A telecommunications provider operating in the state of Texas shall:

(A) Provide to all applicable 9-1-1 administrative entities the name, title, address, and telephone number of the telecommunications provider's 9-1-1 contacts including but not limited to, a designated contact person to be available at all times to work with the appropriate 9-1-1 administrative entity or entities, CSEC and the commission to resolve 9-1-1-related emergencies. CSEC shall be notified of any change to a telecommunications provider's designated 9-1-1 contact personnel within five business days.

(B) Develop a 9-1-1 disaster recovery and service restoration plan with input from the applicable 9-1-1 administrative entity or entities, CSEC, and the commission.

(f) Database integrity. In order to ensure the consistent quality of database information required for fixed-location 9-1-1 services, the following standards apply.

(1) A CTU operating in the state of Texas shall:

(A) Utilize a copy of the 9-1-1 administrative entity's MSAG or other appropriate governmental source, such as post offices and local governments, to confirm that valid addresses are available for 9-1-1 calls for areas where the 9-1-1 service includes selective routing, or automatic location identification, or both, in order to confirm that valid addresses are available for 9-1-1 calls. This requirement is applicable where the 9-1-1 administrative entity has submitted an MSAG for the service area to the designated 9-1-1 database management services provider. The MSAG must be made available to the CTU at no charge and must be in a mechanized format that is compatible with the CTU's systems. This requirement shall not be construed as a basis for denying installation of basic telephone service, but as a process to minimize entry of erroneous records into the 9-1-1 system.

(B) Take reasonable and necessary steps to avoid submission of telephone numbers associated with non-dialtone generating service to the 9-1-1 database management services provider.

(C) Submit corrections to inaccurate subscriber information to the 9-1-1 database management services provider within 72 hours of notification of receipt of the error file from the 9-1-1 database management services provider.

(D) As applicable, coordinate 9-1-1 database error resolution for resale customers.

(2) A 9-1-1 database management services provider operating in the state of Texas shall:

(A) Provide copies of the MSAG(s) for the 9-1-1 administrative entities it serves to any CTU authorized to provide local exchange service within the jurisdiction of those 9-1-1 administrative entities. The 9-1-1 database management services provider shall make all updates to the MSAG electronically available to CTUs within 24 hours of update by the 9-1-1 administrative entity.

(B) Upon receipt of written confirmation from the appropriate CTU, delete inaccurate subscriber information within 24 hours for deletions of fewer than 100 records. For deletions of 100 records or more, the database management service provider shall delete the records as expeditiously as possible within a maximum time frame of 30 calendar days.

(g) Cost recovery. A CTU may not charge a 9-1-1 administrative entity, through tariffed or non-tariffed charges, for the preparation and transfer of files from the CTU's service order system to be used in the creation of 9-1-1 call routing data and 9-1-1 ALI data.

(h) Unbundling. A dominant CTU that is a 9-1-1 network services provider and a 9-1-1 database management services provider, if it has not already done so prior to the effective date of this section, must file within 90 days from the effective date of this section an alternative 9-1-1 tariff that provides 9-1-1 administrative entities the option to purchase any separately offered and priced 9-1-1 service.

(i) Migration of 9-1-1 Service. Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to impair a 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems and/or NG9-1-1 systems, or to require the removal of unnecessary direct 9-1-1 dedicated trunks, circuits, databases, or functions.

(1) For purposes of this subsection, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(2) Paragraph (1) of this subsection is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Paragraph (1) of this subsection is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(j) 9-1-1 Service Agreement

(1) A CTU that provides local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority pursuant to such 9-1-1 service agreement.

(2) A CTU that provides resold local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority pursuant to such 9-1-1 service agreement.

§26.435. Cost Recovery Methods for 9-1-1 Dedicated Transport.

(a) Purpose. The purpose of this section is to establish uniform cost recovery methods for direct dedicated 9-1-1 trunks approved by the appropriate 9-1-1 administrative entity or entities and used in the provision of 9-1-1 service to end users by certificated telecommunications utilities (CTUs). The maximum nonrecurring and monthly recurring reimbursable charges in subsection (c)(1) of this section apply only when the points of interconnection are not a material change to the current provisioning of 9-1-1 services or the points of interconnection are within the current local access and transport areas LATAs. In the event that a CTU considers a request by a 9-1-1 administrative entity or entities to be a material change, the CTU within sixty days of receipt of the request may file an application with the commission requesting a revised reimbursement rate. The CTU is not required to begin provisioning until the commission issues its final order on the application, unless the 9-1-1 administrative entity or entities agree to pay the CTU's proposed revised reimbursement rate, subject to true-up once the commission approves a reimbursement rate for the provisioning.

(b) Application. This section applies to all CTUs that are facilities based and providing local exchange service.

(c) Reimbursable costs.

(1) 9-1-1/CTU Reimbursement. Subject to the applicable law regarding payments by a 9-1-1 administrative entity, the appropriate 9-1-1 administrative entity or entities shall reimburse a CTU a maximum non-recurring rate of $165 and recurring rate of $39 per month as the total compensation for each direct dedicated 9-1-1 trunk unless:

(A) the CTU files a petition with the commission and notice of such filing with the appropriate 9-1-1 administrative entity or entities for the imposition of a different rate no later than June 1 of the calendar year; and

(B) the CTU provides evidence to the commission that, based upon certain technology deployment, a different rate should apply; and

(C) after appropriate review, including comment from the appropriate 9-1-1 administrative entity or entities, the commission approves such rate as requested by the CTU.

(2) Any commission approved change in rate for compensation for direct dedicated 9-1-1 trunk(s) shall become effective no earlier than October 1 of the same calendar year.

(3) Inter-CTU Allocation methodology. Each CTU that originates a 9-1-1 call shall receive a pro rata share of the commission approved recurring rate(s) under paragraph (1) or (2) of this subsection for 9-1-1 dedicated transport of the call, based upon the transport mileage between the CTU's end office or point of presence (POP) to the point of interconnection and the 9-1-1 network service provider's transport mileage from the point of interconnection to the E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or NG9-1-1 system. The transport mileage used to calculate the pro rata share shall not exceed 14 miles from the originating CTU end office or POP to the point of interconnection.

(A) The points of interconnection for local traffic in existing interconnection agreements are acceptable for the purposes of calculating the pro rata share of reimbursable costs, unless the CTUs mutually agree to different points of interconnection.

(B) To the extent a CTU provisions its own direct dedicated 9-1-1 trunk(s), the CTU is required to compensate such provider for port usage and termination charges. The 9-1-1 network services provider shall assess such charges on a Total Element Long Run Incremental Cost (TELRIC) basis.

(C) To the extent a CTU leases direct dedicated 9-1-1 trunk(s) from a 9-1-1 network services provider, the CTU is required to compensate such provider for transport, port usage, and termination charges. The 9-1-1 network services provider shall assess such charges on a TELRIC basis.

(D) To the extent a CTU leases from a 9-1-1 network services provider direct dedicated 9-1-1 trunk extending from the CTU's end office or POP to the point of interconnection, the 9-1-1 network services provider shall assess such charges on a TELRIC basis.

(E) A competitive local exchange carrier (CLEC) may lease or provision its own direct dedicated 9-1-1 trunks to the point of interconnection or directly to the 9-1-1 network services provider's E9-1-1 selective router, 9-1-1 tandem, IP-9-1-1 based system, or NG9-1-1 system.

(F) Nothing in this section is intended to preclude the commission from exercising authority for situations involving CTUs.

(4) The number of direct dedicated 9-1-1 trunks needed for 9-1-1 purposes shall be determined by the CTU following industry standards to provide a grade of service of P.01 or greater, or its IP or NG9-1-1 equivalent, but the minimum number of direct dedicated 9-1-1 trunks to each E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or NG9-1-1 system per service arrangement shall not be less than two.

(5) As a prerequisite to receiving compensation for more than the minimum number of direct dedicated 9-1-1 trunks required to meet the P.01 grade of service, the CTU must provide to the 9-1-1 administrative entity or entities, at least 30 days prior to seeking additional compensation, copies of traffic studies, performed using measured call volumes on the individual trunk group, establishing that more than the minimum number of direct dedicated 9-1-1 trunks required to meet the P.01 grade of service are necessary.

(6) The traffic study or summary provided in response to paragraph (5) of this subsection shall be provided to the 9-1-1 administrative entity or entities at no cost. Any other traffic studies to evaluate current network performance will be provided to the 9-1-1 administrative entity or entities upon request, and the CTU shall be compensated by the 9-1-1 administrative entity or entities on a time and materials basis at rates that do not exceed the tariff rates approved as reasonable by the commission for the dominant CTU in the rate center.

(7) Only the CTU originating a direct dedicated 9-1-1 trunk can submit charges to the appropriate 9-1-1 administrative entity or entities for the maximum reimbursement required in paragraph (1) of this subsection. A dedicated 9-1-1 trunk must be approved by the appropriate 9-1-1 administrative entity or entities as necessary prior to connecting to an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or NG9-1-1 system. The appropriate 9-1-1 administrative en-

tity or entities may approve dedicated 9-1-1 trunking arrangements that aggregate the 9-1-1 service of multiple CTUs.

(8) Where the same direct dedicated 9-1-1 trunks are permitted by the relevant service arrangements to serve areas administered by multiple 9-1-1 administrative entities, a CTU shall contact the 9-1-1 administrative entity serving the largest number of access lines for the area served by the CTU with those direct dedicated 9-1-1 trunks and there shall be a rebuttable presumption that the 9-1-1 administrative entity serving the largest number of access lines is the appropriate 9-1-1 administrative entity to receive the billings for these direct dedicated 9-1-1 trunks. The 9-1-1 administrative entity that is responsible for receiving the billings for direct dedicated 9-1-1 trunks pursuant to this subsection, may seek reimbursement of such expense from other 9-1-1 administrative entities within the affected rate center.

(9) The 9-1-1 network services provider shall bill the appropriate 9-1-1 administrative entity and shall not bill a CTU for ANI, ALI, and/or selective routing services. Billing for additional or other 9-1-1 related services specifically required by a CTU is permitted.

(d) Reimbursement prerequisites. A CTU must comply with each of the following prerequisites before the CTU can obtain reimbursement from the appropriate 9-1-1 administrative entity for direct dedicated 9-1-1 trunks:

(1) Before the CTU initiates the provision of local exchange service in those areas in which a 9-1-1 administrative entity provides 9-1-1 service, the CTU shall execute a 9-1-1 service agreement with the 9-1-1 administrative entity.

(2) The CTU shall provide verification to each appropriate 9-1-1 administrative entity that it is complying with all requirements of §26.433 of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers) including, but not limited to, §26.433(e)(2) of this title, requiring "a designated contact person to be available at all times to work with the appropriate" 9-1-1 administrative entity."

(3) A CTU that resells its local exchange service to any CTU that, in turn, provides the resold local exchange service to end users, shall demonstrate to the appropriate 9-1-1 administrative entity that the CTU has provided initial notice to its reselling CTUs:

(A) that it does not remit the required 9-1-1 emergency service fees on behalf of reselling CTUs; and

(B) that, subject to a confidentiality agreement with the appropriate 9-1-1 administrative entity, it will release reselling CTUs wholesale billing records to 9-1-1 administrative entities for quality measurement purposes, including, but not limited to, auditing a reselling CTU's collection and remittance of 9-1-1 emergency service fees in accordance with applicable law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006073
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 664. CONTINUING EDUCATION

22 TAC §664.4

The Texas Board of Professional Land Surveying (Board) adopts amendments to §664.4, relating to self-directed study as an acceptable type of continuing education. The amended section is adopted with changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6016) and will be republished.

The amended section is adopted partly in response to requests received and legislative inquiries. The amended section also facilitates the accrual of continuing education hours, the required number of which will increase in January 2011. Changes in the adopted amendments respond to public comments or otherwise reflect nonsubstantive variations from the proposed amendments. The Board's representative from the Office of the Attorney General has advised that the changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be no more burdensome than under the proposed sections. Accordingly, republication of the adopted sections as proposed amendments is not required.

Amended §664.4 adds a new item to the list of types of acceptable continuing education.

The following entities furnished written comments on the proposed amendments: Texas Society of Professional Surveyors and individuals.

One commenter opposed the proposed addition, asserting that the amendment will diminish the quality and standards of continuing education for surveyors. The Board disagrees. Self-study is an acceptable type of continuing education for many Texas professionals, including architects, attorneys, engineers, and doctors. Including self-study in options for continuing education has not diminished the quality of continuing education in those fields, and there is no evidence that the effect would differ with professional surveyors. No change was made in response to this comment.

Several commenters raised concerns about how the Board will audit self-study hours and how surveyors will be held accountable for their submitted self-study hours. The Board agrees. The Board will create a reporting form for surveyors to record their self-study hours, and will continue random auditing under §664.7 to ensure the integrity of self-reporting is maintained. No change was made in response to this comment.

Several commenters supported the addition, suggesting that further guidelines are necessary specifying what topics and materials are acceptable to fulfill the self-study requirement. Commenters contend without guidelines, a self-directed study is open to misinterpretation and abuse. The Board agrees. The Board will adopt guidance as requested. No change was made in response to this comment.

Several commenters said that the existing requirement for eight hours of continuing education is sufficient. The Board disagrees. The Board has found that additional continuing education is needed to improve the quality and professionalism

of land surveying and to bring land surveying in line with the continuing education requirements of other professions. No change was made in response to this comment.

The amendment is adopted pursuant to Title 6, Subtitle C, §1071.151 of the Texas Occupations Code, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

§664.4. Types of Acceptable Continuing Education.

Continuing education courses and professional development undertaken by a registrant shall be acceptable if the activity is approved by the board and falls in one or more of the following categories:

(1) appointment and membership on the board;

(2) completion of undergraduate or graduate academic courses with a passing grade in areas supporting development of skill and competence in professional land surveying at an institution which is accredited by ABET, Southern Association of Colleges and Schools or an equivalent;

(3) teaching or consultation in programs such as institutes, seminars, workshops which provide increased professional knowledge related to the practice of professional land surveying;

(4) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which provide increased professional knowledge related to the practice of professional land surveying and are conducted by persons qualified within their respective professions by appropriate state licensure or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a graduate degree and certification by their respective professional associations;

(5) author of a technical paper relating to professional land surveying published in a board approved publication;

(6) appointment to and active participation by non-board members on a committee of the board;

(7) satisfactory completion of scheduled assignments in a correspondence course;

(8) meetings and activities such as inservice programs which are required as a part of one's job; and have been approved by the board;

(9) a maximum of four (4) hours of self-directed study in a topic related to the practice of surveying.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2010.

TRD-201006019
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5263

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 1. PURPOSE OF RULES, GENERAL PROVISIONS

30 TAC §1.10

The Texas Commission on Environmental Quality (commission) adopts the amendment to §1.10 *without changes* to the proposed text as published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3780) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 3544 enacted by the 81st Legislature amended Texas Water Code (TWC), §5.128 by removing statutory obstacles to the agency's eBusiness initiative. The eBusiness initiative was a commission wide effort to evaluate processes that involved the commission's use of paper and determine whether those functions could instead be performed electronically. One of the most significant items identified in that process was issuance of notices and other documents by the chief clerk's office. HB 3544 authorizes but does not require the commission to utilize electronic means of transmission of information including notices, orders, and decisions issued or sent by the commission. Many agency rules regarding these documents expressly require that they be mailed and there are many rules that further require the United States Postal Service to be the carrier. The rulemaking, as further described, provides authority for the agency to send these items electronically. The rulemaking does not apply to the transmittal of information by offices of the commission such as the executive director and the Office of Public Interest Counsel when those offices are transmitting information in their capacity as parties in contested case hearings before the State Office of Administrative Hearings (SOAH) or proceedings before the commission. The applicable procedural rules and SOAH orders will continue to apply under those circumstances. HB 3544 also amended Texas Government Code, §552.137 by creating an additional exception to that section which addresses confidentiality of email addresses. It provides that email addresses provided to a governmental body for the purpose of providing public comment on or receiving notices relating to an application, or receiving orders or decisions, are not covered by the confidentiality and non-disclosure provisions of Texas Government Code, §552.137. The change to Texas Government Code, §552.137 is self implementing and therefore not included as part of this rulemaking; however, it will affect the commission's implementation of this rulemaking by changing its practice regarding disclosure of emails.

The amendment to §1.10(e) will add electronic filing as a method for filing with the chief clerk's office. This change did not arise from HB 3544, but it does implement the agency's eBusiness initiative. In order to utilize the chief clerk's electronic filing system, documents must be associated with an active docket number assigned by the commission. Because the electronic filing of documents with the chief clerk does not involve documents being filed in order to satisfy federal requirements under federally delegated, authorized, or approved programs, this rule change does not affect the commission's electronic reporting system, the State of Texas Environmental Electronic Reporting System, known as STEERS, which received federal approval from the United States Environmental Protection Agency under its Cross-Media Electronic Reporting Rule, known as CROMERR.

SECTION DISCUSSION

The adopted amendment to §1.10(c) adds electronic filing as a method for filing documents where appropriate with the chief clerk's office. The rule provides that the rule authorizing electronic filing supplements other procedural rules of the commission which specify methods for filing but which do not include electronic filing. The amendment to §1.10(d) provides that persons using the chief clerk's designated electronic filing system must also comply with any other instructions set forth by the chief clerk on the commission's website. The amendment to §1.10(e) provides that for documents filed using the chief clerk's designated electronic filing system, the time of filing is upon receipt by the system as evidenced by the system's confirmation email, or the commission's integrated database.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to amend the commission's rules to incorporate the current practice of allowing the filing of certain documents electronically with the chief clerk's office, and to incorporate the changes made by HB 3544 to TWC, §5.128(a) which authorize the commission to "utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission." Therefore, the adopted rulemaking does not meet the definition of a "major environmental rule." Even if the adopted rule met the definition of a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking would provide authority for the commission to transmit information electronically and provide the option for electronic filing of certain documents with the chief clerk's office as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE and SECTION DISCUSSION sections. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this adopted rulemaking is to incorporate changes to TWC, §5.128(a) made by HB 3544 and to assist in the implementation of the agency's eBusiness initiative. The adopted rule will substantially advance this stated purpose by incorporating into the commission's rules the provisions of this statute which authorize the commission to electronically transmit information and add to the rules the option for persons to file certain documents electronically with the chief clerk's office. Nevertheless, the commission further evaluated the adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule authorizes the commission to transmit information electronically and allow persons to file certain documents electronically, and would not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the coastal management program.

PUBLIC COMMENT

The commission held a public hearing on June 10, 2010. The comment period closed on June 14, 2010. The commission received one comment in support from the Texas Chemical Council (TCC). TCC also expressed concerns about the wording of the rule as proposed and suggested some changes to the proposed rule. The commission received no other comments.

RESPONSE TO COMMENTS

TCC commented that it is generally supportive of eBusiness initiatives as they offer an opportunity to send and receive information in real time. They also minimize the need for transmittal of paper documents and provide electronic means to record and document such transfers.

The commission generally agrees with the commenter about the advantages of eBusiness.

TCC expressed concerns in its comments about transitioning to the use of email for transmitting notices and other information. TCC also expressed concern about which email address the chief clerk will use and commented that most corporate email addresses are individual or employee-specific and that individuals go on vacation, change jobs, and are out of the office for a variety of reasons. TCC also commented that computer servers can fail, individual email boxes have size restrictions, and email may not

be delivered. TCC commented that due to the reasons stated above, in addition to other reasons, email submission is not a guarantee of delivery and contrasted it with certified mail as an example. TCC further commented that the commission should develop a process for corporations to provide a company-specific email address to the chief clerk's office for receipt of notices and other information and that no email addresses be individual-specific if so desired by the company. TCC suggested that the commission add a provision to its rules that establishes the process for businesses to designate an email address for receipt of information from the chief clerk's office.

The commission appreciates the comment. The commission responds that a regulated entity is able to designate its preferred company-specific email address on the commission's core data form. The core data form is the mechanism by which the commission collects contact information about the entities it regulates. The primary method for delivery of information from the chief clerk's office is first class mail. First class mail, similar to electronic mail, also does not provide a guarantee of delivery. The commission also responds that certified mail is only used in limited instances by the commission. Those instances typically include situations where proof is needed to show that highly sensitive and/or time sensitive information was received, when it was received, and by whom. At this time, the commission is not electing to send information electronically in lieu of certified mail if the purposes for sending mail certified cannot be served by electronic transmission. The commission made no change to the rule in response to the comment.

TCC also suggested revisions to §1.10(e) to include a statement that electronic transmission will be to a designated address.

The commission appreciates the comment but because §1.10 only applies to documents transmitted to the commission and not to documents transmitted by the commission, the commission respectfully disagrees with the commenter about the need to revise §1.10(e) to state that electronic transmission will be to a designated address. Additionally, as discussed above, businesses and other regulated entities already have a mechanism by which to designate their preferred email address, by simply entering it on their core data form. Accordingly, the commission made no change in response to this comment.

TCC commented that its members are concerned that emailed notices may be missed for a variety of reasons and that they might be subject to enforcement if time sensitive information is not received and addressed appropriately. TCC commented that the commission should strive to ensure that the right information gets to the right people at the right time and that this will require development of a sustainable electronic delivery process.

The commission appreciates TCC's concerns and responds that this rulemaking provides the authority for the commission and its various offices to send information electronically but does not require any commission office or program to substitute electronic transmission for hardcopy mailing. Typically, the commission uses certified mail to transmit time sensitive information that could lead to enforcement if not timely addressed by the recipient. Certified mail is also typically used in those instances where proof is needed to show that highly sensitive and/or time sensitive information was received, when it was received, and by whom. At this time, the commission is not electing to send information electronically in lieu of certified mail if the purposes for sending mail certified cannot be served by electronic transmission. The commission has made no changes in response to this comment.

TCC requested that the commission clarify this language from the preamble: "It provides that email addresses provided to a governmental body for the purpose of providing public comment on or receiving notices relating to an application, or receiving orders or decisions, are not covered by the confidentiality and non-disclosure provisions of the Texas Government Code, §552.137." Specifically, TCC asks the agency to clarify its intent concerning confidential business information. TCC further states that it assumes the agency's statement means the actual email address cannot be confidential but that any business information contained in the email can remain confidential when so designated.

The commission responds that the statement in the preamble was taken directly from the statute which only pertains to email addresses and not the content of the emailed message. The adopted rule does not affect the confidential status of business information. The commission has made no changes in response to this comment.

TCC commented that the commission should be required to retain documentation that the email was received and did not "bounce-back" due to server restrictions or other issues. TCC also commented that in the event an email is undeliverable, the commission should be required to send the notice or other document using the United States Postal Service.

The commission responds that "bounce-backs" are noted in the comment field for that individual or entity in the chief clerk's database. If an email is returned undelivered, the chief clerk's staff will check the address against its records. If an error is discovered, they will re-send the email to the correct address. The chief clerk's office follows the same practice for undeliverable emails as it does for returned first class mail. When first class mail is returned, the chief clerk will check the address against commission records and re-send if there was an error. However, if there is no apparent problem with the address, the commission does not attempt to send the mail by other means. The commission made no change in response to this comment.

TCC also commented that the commission should delete language requiring that persons who provide public comment notify the commission in the event their email address changes. TCC commented that the requirement to update email addresses was not part of the legislation and will add an unnecessary burden to those submitting public comment, potentially discouraging submission of comments. TCC further commented that companies or entities submitting comments would need a running log of all rules for which public comments were submitted and that because most comments include a phone contact, the commission could follow up by phone if desired.

The commission responds that the adopted rule does not require an email address owner to identify all submissions made under the previous address when updating its email address. It would simply update its core data form on file with the commission to add the new address. The commission does not view this as unreasonably burdensome. Because the chief clerk's office has no way of knowing whether the addresses in its database are current, imposing this obligation on the address owner is the only way to ensure the database is not populated with obsolete email addresses. The commission made no change in response to this comment.

TCC in its comments suggested that the commission revise §19.30(c) to state that information sent by the commission is presumed to have been received if it was sent to the desig-

nated email address and the commission has a valid electronic confirmation of receipt which includes the time and date the information was received.

The commission responds that the only available documentation related to an email transmission (or failure of) is documentation that the email message was undeliverable. When sending information by first class mail, the only documentation regarding delivery status is the returned letter. The commission made no changes in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; and §5.103 and §5.105, which establish the commission's general authority to adopt rules.

The adopted amendment implements TWC, §5.128.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006041
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 11, 2010
Proposal publication date: May 14, 2010
For further information, please call: (512) 239-2548

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CHAPTER 19. ELECTRONIC REPORTING; ELECTRONIC TRANSMISSION OF INFORMATION BY COMMISSION

The Texas Commission on Environmental Quality (commission) adopts the amendment to §19.3; and adopts new §19.30 *without changes* to the proposed text as published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3783) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 3544 enacted by the 81st Legislature amended Texas Water Code (TWC), §5.128 by removing statutory obstacles to the agency's eBusiness initiative. The eBusiness initiative was a commission wide effort to evaluate processes that involved the commission's use of paper and determine whether those functions could instead be performed electronically. One of the most significant items identified in that process was issuance of notices and other documents by the chief clerk's office. HB 3544 authorizes but does not require the commission to utilize electronic means of transmission of information including notices, orders, and decisions issued or sent by the commission. Many agency rules regarding these documents expressly require that they be mailed and there are many rules that further require the United States Postal Service to be the carrier. The rulemaking, as further described, provides authority for the agency to send these items electronically. The rulemaking does not apply to the transmittal of information by offices of the commission such as the executive director and the Office of Public Interest Counsel when those offices are transmitting information in their capacity as parties in contested case hearings before the State Office of Administrative Hearings (SOAH) or proceedings before the commission. The applicable procedural rules and SOAH orders will continue to apply under those circumstances. HB 3544 also amended Texas Government Code, §552.137 by creating an additional exception to that section which addresses confidentiality of email addresses. It provides that email addresses provided to a governmental body for the purpose of providing public comment on or receiving notices relating to an application, or receiving orders or decisions, are not covered by the confidentiality and non-disclosure provisions of Texas Government Code, §552.137. The change to Texas Government Code, §552.137 is self implementing and therefore not included as part of this rulemaking; however, it will affect the commission's implementation of this rulemaking by changing its practice regarding disclosure of emails.

The amendment to §1.10(e), the companion rulemaking, will add electronic filing as a method for filing with the chief clerk's office. This change did not arise from HB 3544, but it does implement the agency's eBusiness initiative. In order to utilize the chief clerk's electronic filing system, documents must be associated with an active docket number assigned by the commission. Because the electronic filing of documents with the chief clerk does not involve documents being filed in order to satisfy federal requirements under federally delegated, authorized, or approved programs, this rule change does not affect the commission's electronic reporting system, the State of Texas Environmental Electronic Reporting System, known as STEERS, which received federal approval from the United States Environmental Protection Agency under its Cross-Media Electronic Reporting Rule, known as CROMERR.

SECTION BY SECTION DISCUSSION

The commission adopts a revision to the title of Chapter 19 to include electronic transmittal of information by the commission. The commission also adopts a revision to the applicability language in §19.3 to indicate that §19.3(a) only applies to Subchapters A - C.

The commission adopts new Subchapter D entitled *Electronic Transmission of Information by Commission* and new §19.30 which provide authority for the commission to transmit information, including notices, orders, and decisions, electronically notwithstanding any other law or rule. This rule is necessary in order to make clear in commission rules that regardless of any other law or rules to the contrary, the commission may transmit information electronically. Subsection (b) states that a person who provides their email address to the commission for the purpose of providing public comment or receiving notices, orders, or decisions must provide a valid email address to the commission and notify the appropriate commission office in the event there is a change in the email address. Under subsection (c), information provided by electronic means of transmittal, including notices, orders, or decisions, is presumed to have been received by a person if the information is sent by the commission to the most recent email address provided by that person.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet

the definition of "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to amend the commission's rules to incorporate the current practice of allowing the filing of certain documents electronically with the chief clerk's office, and to incorporate the changes made by HB 3544 to TWC, §5.128(a) which authorize the commission to "utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission." Therefore, the adopted rulemaking does not meet the definition of a "major environmental rule." Even if the adopted rules met the definition of a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking would provide authority for the commission to transmit information electronically and provide the option for electronic filing of certain documents with the chief clerk's office as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES and SECTION BY SECTION DISCUSSION sections. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this adopted rulemaking is to incorporate changes to TWC, §5.128(a) made by HB 3544 and to assist in the implementation of the agency's eBusiness initiative. The adopted rules will substantially advance this stated purpose by incorporating into the commission's rules the provisions of this statute which authorize the commission to electronically transmit information and add to the rules the option for persons to file certain documents electronically with the chief clerk's office. Nevertheless, the commission further evaluated the adopted rules and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking authorizes the commission to transmit information electronically and allow persons to file certain documents electronically, and would not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the coastal management program.

PUBLIC COMMENT

The commission held a public hearing on June 10, 2010. The comment period closed on June 14, 2010. The commission received one comment in support from the Texas Chemical Council (TCC). TCC also expressed concerns about the wording of the rules as proposed and suggested some changes to the proposed rules. The commission received no other comments.

RESPONSE TO COMMENTS

TCC commented that it is generally supportive of eBusiness initiatives as they offer an opportunity to send and receive information in real time. They also minimize the need for transmittal of paper documents and provide electronic means to record and document such transfers.

The commission generally agrees with the commenter about the advantages of eBusiness.

TCC expressed concerns in its comments about transitioning to the use of email for transmitting notices and other information. TCC also expressed concern about which email address the chief clerk will use and commented that most corporate email addresses are individual or employee-specific and that individuals go on vacation, change jobs, and are out of the office for a variety of reasons. TCC also commented that computer servers can fail, individual email boxes have size restrictions and email may not be delivered. TCC commented that due to the reasons stated above, in addition to other reasons, email submission is not a guarantee of delivery and contrasted it with certified mail as an example. TCC further commented that the commission should develop a process for corporations to provide a company-specific email address to the chief clerk's office for receipt of notices and other information and that no email addresses be individual-specific if so desired by the company. TCC suggested that the commission add a provision to its rules that establishes the process for businesses to designate an email address for receipt of information from the chief clerk's office.

The commission appreciates the comment. The commission responds that a regulated entity is able to designate its preferred company-specific email address on the commission's core data form. The core data form is the mechanism by which the commission collects contact information about the entities it regulates. The primary method for delivery of information from the chief clerk's office is first class mail. First class mail, similar to electronic mail, also does not provide a guarantee of delivery.

The commission also responds that certified mail is only used in limited instances by the commission. Those instances typically include situations where proof is needed to show that highly sensitive and/or time sensitive information was received, when it was received, and by whom. At this time, the commission is not electing to send information electronically in lieu of certified mail if the purposes for sending mail certified cannot be served by electronic transmission. The commission made no change to the rules in response to the comment.

TCC also suggested revisions to §1.10(e) to include a statement that electronic transmission will be to a designated address.

The commission appreciates the comment but because §1.10 only applies to documents transmitted to the commission and not to documents transmitted by the commission, the commission respectfully disagrees with the commenter about the need to revise §1.10(e) to state that electronic transmission will be to a designated address. Additionally, as discussed above, businesses and other regulated entities already have a mechanism by which to designate their preferred email address, by simply entering it on their core data form. Accordingly, the commission made no change in response to this comment.

TCC commented that its members are concerned that emailed notices may be missed for a variety of reasons and that they might be subject to enforcement if time sensitive information is not received and addressed appropriately. TCC commented that the commission should strive to ensure that the right information gets to the right people at the right time and that this will require development of a sustainable electronic delivery process.

The commission appreciates TCC's concerns and responds that this rulemaking provides the authority for the commission and its various offices to send information electronically but does not require any commission office or program to substitute electronic transmission for hardcopy mailing. Typically, the commission uses certified mail to transmit time sensitive information that could lead to enforcement if not timely addressed by the recipient. Certified mail is also typically used in those instances where proof is needed to show that highly sensitive and/or time sensitive information was received, when it was received, and by whom. At this time, the commission is not electing to send information electronically in lieu of certified mail if the purposes for sending mail certified cannot be served by electronic transmission. The commission has made no changes in response to this comment.

TCC requested that the commission clarify this language from the preamble: "It provides that email addresses provided to a governmental body for the purpose of providing public comment on or receiving notices relating to an application, or receiving orders or decisions, are not covered by the confidentiality and non-disclosure provisions of the Texas Government Code, §552.137." Specifically, TCC asks the agency to clarify its intent concerning confidential business information. TCC further states that it assumes the agency's statement means the actual email address cannot be confidential but that any business information contained in the email can remain confidential when so designated.

The commission responds that the statement in the preamble was taken directly from the statute which only pertains to email addresses and not the content of the emailed message. The adopted rules do not affect the confidential status of business information. The commission has made no changes in response to this comment.

TCC commented that the commission should be required to retain documentation that the email was received and did not "bounce-back" due to server restrictions or other issues. TCC also commented that in the event an email is undeliverable, the commission should be required to send the notice or other document using the United States Postal Service.

The commission responds that "bounce-backs" are noted in the comment field for that individual or entity in the chief clerk's database. If an email is returned undelivered, the chief clerk's staff will check the address against its records. If an error is discovered, they will re-send the email to the correct address. The chief clerk's office follows the same practice for undeliverable emails as it does for returned first class mail. When first class mail is returned, the chief clerk will check the address against commission records and re-send if there was an error. However, if there is no apparent problem with the address, the commission does not attempt to send the mail by other means. The commission made no change in response to this comment.

TCC also commented that the commission should delete language requiring that persons who provide public comment notify the commission in the event their email address changes. TCC commented that the requirement to update email addresses was not part of the legislation and will add an unnecessary burden to those submitting public comment potentially discouraging submission of comments. TCC further commented that companies or entities submitting comments would need a running log of all rules for which public comments were submitted and that because most comments include a phone contact, the commission could follow up by phone if desired.

The commission responds that the adopted rules do not require an email address owner to identify all submissions made under the previous address when updating its email address. It would simply update its core data form on file with the commission to add the new address. The commission does not view this as unreasonably burdensome. Because the chief clerk's office has no way of knowing whether the addresses in its database are current, imposing this obligation on the address owner is the only way to ensure the database is not populated with obsolete email addresses. The commission made no change in response to this comment.

TCC in its comments suggested that the commission revise §19.30(c) to state that information sent by the commission is presumed to have been received if it was sent to the designated email address and the commission has a valid electronic confirmation of receipt which includes the time and date the information was received.

The commission responds that the only available documentation related to an email transmission (or failure of) is documentation that the email message was undeliverable. When sending information by first class mail, the only documentation regarding delivery status is the returned letter. The commission made no changes in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §19.3

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; and §5.103 and §5.105, which establish the commission's general authority to adopt rules.

The amendment implements TWC, §5.128.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006042
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 11, 2010
Proposal publication date: May 14, 2010
For further information, please call: (512) 239-2548

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SUBCHAPTER D. ELECTRONIC TRANSMISSION BY COMMISSION

30 TAC §19.30

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; and §5.103 and §5.105, which establish the commission's general authority to adopt rules.

The new section implements TWC, §5.128.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 11, 2010
Proposal publication date: May 14, 2010
For further information, please call: (512) 239-2548

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

SUBCHAPTER A. BOAT SEWAGE DISPOSAL

The Texas Commission on Environmental Quality (TCEQ, commission or agency) adopts the repeal of §§321.1 - 321.18 and new §§321.1 - 321.11.

The repeal of §§321.1 - 321.18 and new §§321.1 - 321.11 are adopted *without changes* as published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3786) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2009, the 81st Legislature passed Senate Bill (SB) 2445, relating to the disposal of sewage by certain boats. SB 2445 amended Texas Water Code (TWC), §26.044 and §26.045 by revising the definition for the term "Boat;" adding definitions for "Boat pump-out station," "Shoreside, mobile, or floating installation," and "Surface water in the state;" and by changing the frequency for renewal of certifications for pump-out stations from annual to biennial. The adopted rules incorporate the changes required by SB 2445.

The adopted rules promote consistency with Clean Water Act, §312 and 40 Code of Federal Regulations (CFR) Part 140. Specifically, the repealed rules prohibited the discharge of treated and untreated sewage from a boat into or adjacent to 25 designated lakes. However, 40 CFR §140.3 prohibits the discharge of treated and untreated sewage from a boat into all freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose entrance points and exit points are as such to prevent the ingress and egress by vessel traffic subject to the regulation, rivers that do not support interstate vessel traffic, and any other waterbody that is designated as a no discharge zone (NDZ). An NDZ is an area of a waterbody or an entire waterbody into which the discharge of treated and untreated sewage from all boats is completely prohibited. The United States Environmental Protection Agency (EPA) has established a procedure that allows states to designate other waterbodies, such as coastal waters and estuaries, as NDZs by receiving approval from the EPA through a petition process. In February 1995, Clear Lake was designated by the state and the EPA as an NDZ and the rules adopted on March 15, 1996, added Clear Lake to the list of waterbodies designated as NDZs. The adopted rules eliminate conflicting state and federal requirements, and allow for the flexibility of the state and EPA to designate future NDZs without requiring a corresponding change to the rules.

The adopted rules promote consistency with 33 United States Code (USC), §1322. Specifically, 33 USC, §1322 prohibits any state or political subdivision thereof from regulating the design, manufacture, or installation of any marine sanitation device (MSD) on boats other than houseboats. The repealed rules required all boats with MSDs located on any of the designated lakes to install a Type III MSD. As defined by 33 CFR §159.3, Types I and II MSDs are flow-through devices which provide for maceration and disinfection of sewage and a Type III MSD is a holding tank designed to prevent the overboard discharge of treated or untreated sewage. The United Sates Coast Guard (U.S. Coast Guard) regulations (33 CFR §159.7) allow for all three types of MSDs on any boat 65 feet or less in length and for Types II and III on boats more than 65 feet in length. The adopted rules allow for the use and certification of all three types of MSDs, in accordance with U.S. Coast Guard regulations. A state is allowed by 33 USC, §1322(f)(1)(B) to adopt and enforce a statute or regulation with respect to the design, manufacture, installation or use of any MSD on a houseboat, if such statute or regulation is more stringent than the federal standards and regulations. "Houseboat" is defined in 33 USC, §1322(f)(1)(B) as a "vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation." The more stringent requirement for houseboats to be equipped with a Type III MSD was retained in the adopted rules. In addition, the adopted rules require that Type I and Type II MSDs be secured in a manner, as required by 33 CFR §159.7, that prevents the discharge of treated and untreated sewage while the boat is located on an NDZ. The adopted rules eliminate conflicting state and federal requirements.

The adopted rules expand the certification requirement for boats with MSDs installed. Specifically, §321.3 of the repealed rules required that boats operating on any inland freshwater lake designated in §321.2 be equipped with an MSD that is certified under this subchapter. The changes resulting from SB 2445 allowed, but did not require, the certification requirement to be applied to all surface water in the state. The commission adopted an expansion of the certification requirement to include boats with MSDs installed that are located on all surface water in the state consistent with 33 USC, §1322(f) and 40 CFR Part 140 to promote state-wide consistency and better education of the rule requirements that will improve water quality. A stakeholder meeting was held on November 16, 2009, with approximately ten individuals representing marina associations, marine plumbing businesses, educational and outreach organizations, and state agencies. The stakeholders supported the proposed certification expansion.

The adopted rules include a new section that defines the process by which local governmental entities can obtain authorization for the administration and performance of the functions required by the rules.

The adopted rules have added definitions for clarity of the requirements, corrected references to statutes, made grammatical changes and other non-substantive changes to clarify the adopted rule requirements.

The commission adopts the repeal of all sections of the current subchapter and simultaneously adopts new sections that improve organization and readability. The adopted reorganization of this subchapter removes redundancy in the requirements and places similar requirements in the same section. The adopted rules expand the commission's ability to protect the health and safety of aquatic and wildlife resources, as well as water quality. The adopted rules promote consistency between federal and state rules.

SECTION BY SECTION DISCUSSION

§321.1, Authority

The commission adopts new §321.1, which establishes the authority of this subchapter, TWC, Chapter 26, Water Quality Control.

§321.2, Definitions

The commission adopts new §321.2 to incorporate portions of repealed §321.1, Definitions, as well as new definitions. The definition for "Boat" is adopted as §321.2(1), and corresponds to the definition in SB 2445. The definition for "Boat pump-out station" is adopted as §321.2(2) and corresponds to the definition in SB 2445. The definition for "Clear Lake" is adopted as §321.2(3) with no changes from the repealed rules. The definition for "Holding tank" is adopted as §321.2(4) with no changes from the repealed rules. The definition for "Houseboat" is adopted as §321.2(5) and includes those boats that are capable of being used as a stationary and/or mobile residence, as these boats may pose a greater risk to water quality due to the amount of time they may be occupied and the volume of waste that may be generated. The definition for "Marine sanitation device" is adopted as §321.2(6) and incorporates different types of MSDs by reference to the federal regulations (40 CFR Part 159). The definition for "No discharge zone" is adopted as §321.2(7) to clearly define this term that is unique to boat sewage disposal for clarity of its use in this subchapter. The definition for "Sewage" is adopted as §321.2(8) and includes a description of the sources from which sewage is derived and incorporates language from the definition of "Sewage" found in TWC, Chapter 26. The definition for "Shoreside, mobile, or floating installation" is adopted as §321.2(9) and corresponds to the definition added in SB 2445. The definition for "Surface water in the state" is adopted as §321.2(10) and corresponds to the definition added in SB 2445. The definition for "Toilet" is adopted as §321.2(11) and distinguishes that a toilet is any sanitation device used on a boat which is designed to receive, retain, or dispose of sewage when connected to an MSD. The definitions for "Designated lake," "Pump-out facilities," and "Waters in the state" were repealed because they are not applicable in the adopted rules.

§321.3, Discharge Prohibited

The commission adopts §321.3, which establishes the requirements for the discharge of treated boat sewage into surface water in the state and ensures consistency with federal regulations.

Adopted new §321.3(a) addresses "surface water in the state," as defined by SB 2445. The adopted rules prohibit discharge of sewage that does not meet federal treatment standards from a boat into any surface water in the state.

Adopted new §321.3(b) establishes a requirement that no sewage, treated or untreated, from a boat may be discharged into: any inland freshwater lake, reservoir, or other impoundment; any river that is not capable of navigation by interstate vessel traffic; or any state designated and federally recognized NDZ. The 25 NDZ lakes listed in repealed §321.2(a) are subsumed in §321.3(b)(3) in the adopted rules. Any subsequent state designated and federally approved NDZ will be covered under §321.3(b)(3) of the adopted rules.

Adopted new §321.3(c) clarifies those areas in which the discharge of treated sewage is allowed under the federal regulations. The adopted rules restrict the discharge of treated boat sewage to certain areas, including coastal waters that begin from any shore of the state moving seaward to a point three nautical miles into the Gulf of Mexico and into certain rivers that support interstate vessel traffic.

§321.4, Requirements for Marine Sanitation Devices

The commission adopts new §321.4, which describes the requirements for installation and operation of MSDs.

Adopted new §321.4(a) requires any MSD that is installed on a boat to meet the U.S. Coast Guard regulations specified in 33 CFR §159.7. This change allows for the use and certification of all three types of MSDs on any boat and removes the requirement for all boats to have an attached holding tank while operating on an NDZ.

Adopted new §321.4(b) requires that a Type I or Type II MSD be secured in a manner required by the U.S. Coast Guard regulations (33 CFR §159.7) to prevent the discharge of sewage while the boat is located on an NDZ.

Adopted new §321.4(c) allows the use of a portable MSD that is designed to carry off sewage for onshore disposal on any boat except a houseboat.

Adopted new §321.4(d) requires any houseboat, regardless of length, to be equipped with at least one permanently installed toilet that is properly connected to a Type III MSD. Some houseboats may be equipped with a Type I or Type II MSD; therefore, the adopted rules do not prohibit flow-through devices on houseboats; however, the addition of a permanently installed Type III

MSD is required. The adopted rules require that all MSDs be secured in a manner that prevents the discharge of any sewage while the houseboat is located on an NDZ.

Adopted new §321.4(e) clarifies the approved methods of disposal of boat sewage and updates references to statutes.

§321.5, Design Specifications and Operation Requirements for Boat Pump-Out Stations

The commission adopts new §321.5, which describes the requirements for design and operation of boat pump-out stations.

Adopted new §321.5(a) defines the criteria for boat pump-out station design.

Adopted new §321.5(b) requires mobile or floating boat pump-out stations to be designed with the same criteria as land-based boat pump-out stations and requires adequate and spill-proof facilities for transfer of the collected sewage.

Adopted new §321.5(c) clarifies the approved methods of disposal for boat pump-out stations and updates references to statutes.

§321.6, Applicability of Certifications

The commission adopts new §321.6, which describes the applicability requirements for certification of boat pump-out stations and MSDs.

Adopted new §321.6(a) establishes that the executive director is authorized to certify MSDs and boat pump-out stations as meeting the requirements of this subchapter.

Adopted new §321.6(b) requires the owner of any boat with a permanently installed MSD that will be located on surface water in the state to obtain and maintain a certification for the MSD. Prior to adoption, boat owners operating on 24 of the 25 designated lakes were required to obtain a certification. The adopted rules expand the certification requirement to surface water in the state beyond these 24 designated lakes.

Adopted new §321.6(c) requires boat pump-out station owners to obtain and maintain a certification decal for their boat pump-out station.

Adopted new §321.6(d) provides exceptions to the certification requirement. During the stakeholder meeting, stakeholders expressed a desire for transient boats or those boats that will be permanently relocating to the state to be allowed a grace period before being required to obtain the certification of the MSD.

Adopted new §321.6(d)(1) exempts boats that are registered in another state or country from the requirement to obtain the certification when they are located on surface water in the state for less than 30 days during any 12-month period.

Adopted new §321.6(d)(2) exempts federal, state, and local governmental agencies from the MSD certification requirement.

Adopted new §321.6(d)(3) exempts those boat owners who operate their boats only on a waterbody for which a local governmental entity has established local certification requirements from paying excessive fees for an additional certification. If the boat is located on surface water outside the jurisdiction for which the local certification is valid, the boat owner would then be required to obtain a certification required by this subchapter at a lesser fee.

§321.7, Obtaining Certifications

The commission adopts new §321.7, which describes the requirements for obtaining certifications.

Adopted new §321.7(a) is applicable to both MSDs and boat pump-out stations and establishes the requirements by which applications should be submitted to the executive director.

Adopted new §321.7(b) establishes the requirements for initial certification of MSDs and boat pump-out stations. The adopted rules require that boat pump-out stations apply for a certification prior to operation and that boat owners submit an application within 45 days of obtaining a boat number under the Texas Water Safety Act (or within 45 days of making the determination that a boat number under the Texas Water Safety Act is not required for the boat).

Adopted new §321.7(c) establishes the requirements for renewal certification of MSDs and boat pump-out stations. The commission anticipates a substantial increase in the number of renewal applications that will need to be processed each odd-numbered calendar year. To ensure that renewal applications are processed and certification decals are issued in a timely manner, the adopted rules require that renewal applications be submitted no later than November 30th prior to the date of expiration of the existing decal.

Adopted new §321.7(d) establishes the requirements for electronic submission of applications for certifications. The commission anticipates a substantial increase in the number of initial and renewal applications that will need to be processed. To ensure that applications are processed and certification decals are issued in a timely manner, the adopted rules require that applications be submitted through an electronic system at such point that one becomes available by the executive director. In addition, the adopted rules require that until such time that an electronic system becomes available, payments for the certification fees are required to be submitted electronically using the commission's approved on-line payment system. The adopted rules allow an exception if electronic submission creates a hardship or is not feasible.

Adopted new §321.7(e) establishes the requirements by which the certification decals will be designed and issued by the executive director.

Adopted new §321.7(f) changes the renewal requirement frequency for boat pump-out stations from annually to biennially, in accordance with the changes from SB 2445.

Adopted new §321.7(g) establishes that the certification decal is valid until expiration whether the boat is traded or sold.

Adopted new §321.7(h) establishes that the executive director may cancel a decal if the applicant misrepresents material facts in an application, or provides false or fraudulent information used for certification.

§321.8, Certification Fees

The commission adopts new §321.8, which describes the fee requirements for certifications.

Adopted new §321.8(a) sets a fee amount of $15.00 for the initial and renewal certification of MSDs.

Adopted new §321.8(b) sets a fee amount of $35.00 for the initial certification and $25.00 for the renewal certification of a boat pump-out station and allows for inspections of boat pump-out stations prior to certification.

Adopted new §321.8(c) establishes that a replacement decal can be obtained for a fee of $2.00.

Adopted new §321.8(d) allows the payment of a $2.00 fee to the commission for a boat that has complied with a local program, at least as stringent as the state program, to obtain a certificate to operate on any surface water in the state outside the jurisdictional boundaries of local regulation.

§321.9, Evidence of Certifications

The commission adopts new §321.9, which establishes the requirements by which certifications must be displayed on boats and boat pump-out stations.

§321.10, Delegation to Local Governmental Entities

The commission adopts new §321.10, which clarifies the process by which local governmental entities may obtain delegation of the certification program.

Adopted new §321.10(a) establishes that the executive director may delegate the authority to administer the certification program to any local governmental entity. Local administration of the certification program allows local governmental entities to tailor their outreach and enforcement programs to the needs of the local area, which protects the health and safety of aquatic and wildlife resources as well as water quality.

Adopted new §321.10(b) and (c) establishes requirements for local governmental entities wishing to seek delegation authority to administer the certification program. The adopted rule require a local governmental entity to submit such a request in writing to the executive director and that the executive director notify the local governmental entity in writing to provide for the terms and conditions of program assumption when the request is approved.

Adopted new §321.10(d) gives any delegated local governmental entity the authority to inspect boat pump-out stations.

Adopted new §321.10(e) establishes the conditions under which the executive director may modify or rescind any powers and functions delegated to any local governmental entity.

§321.11, Criminal Penalties

The commission adopts new §321.11, which establishes that any person who violates the provisions of this subchapter is subject to criminal penalties under the Texas Parks and Wildlife Code.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of "a major environmental rule." Under Texas Government Code, §2001.0225, "a major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the adopted rulemaking is to incorporate the changes required by SB 2445 into the TCEQ rules and promote consistency with Clean Water Act, §312 and 40 CFR Part 140. SB 2445 amended TWC, §26.044 and §26.045 by revising the definition for the term "Boat," adding new definitions for "Boat pump-out station," "Shoreside, mobile, or floating installation," and "Surface water in the state," and by changing the frequency for certifications for pump-out stations from annual to biennial. Because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules are specifically required by state law and do not result in any new environmental requirements.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to incorporate the changes required by SB 2445 into the TCEQ rules and promote consistency with Clean Water Act, §312 and 40 CFR Part 140. Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The commission held a public hearing in Austin, Texas on June 8, 2010. The comment period closed on June 14, 2010. The commission received comments from Galveston Bay Foundation (GBF), Saltmasters Texas LLC (Saltmasters), and Texas A&M University - Texas Sea Grant College Program (TSG). The comments were generally supportive of the rules.

RESPONSE TO COMMENTS

GBF commented that it supports the current proposal for extended coverage beyond current regulation and for improved consistency with U.S. Coast Guard policies. GBF sees the proposed rules as a positive step towards the protection of the state waterways and Galveston Bay. GBF is encouraged that boats operating on Clear Lake will be required to obtain and maintain certifications for on-board MSDs and must display evidence of this by a clearly visible certification decal.

The commission appreciates the support and agrees that expanding the certification requirement and improving consistency with federal regulations will help improve water quality for the

protection of human health, as well as health and safety of aquatic and wildlife resources. No changes were made in response to this comment.

GBF and TSG commented that education and more active enforcement is a key to the success of the new rules. TSG commented that the efforts of the Clean Marina Program and the Clean Boater Program have been directed at trying to improve the performance of boaters by educating them on appropriate disposal methods of boat sewage. TSG looks forward to TCEQ and other agencies who are involved in this program to take a more active role in education and enforcement. GBF commented that there needs to be stepped-up enforcement, either by local jurisdictions, or potentially, by the Texas Parks and Wildlife Department to let boaters know that illegal discharge of boat sewage is a significant issue that needs to be addressed. GBF commented that anything the agency can do to bring more attention to the issue of boat sewage disposal, especially on the Coast, would be very much appreciated.

The commission agrees that boater education is a key to the effectiveness of improving water quality, especially in areas with high boater activity. The agency has initiated meetings with the Texas Parks and Wildlife Department to discuss the development of a state-wide education and outreach program as well as how to strengthen enforcement of the rules. No changes were made in response to these comments.

Saltmasters commented that most of the sewage discharges in the Lower Laguna Madre are from commercial tour boats with tanks of 300 to 400 gallons. Saltmasters suggested that the commercial boats be required to have a certification sticker, so as to allow a marine safety enforcement officer reasonable cause to board the boat for inspection.

The definition of "Boat," as amended by SB 2445, excludes vessels that are subject to inspection under 46 USC, §3301. The inspection of commercial tour boats is a function delegated to the U.S. Coast Guard under 46 USC, §3301. No changes were made in response to this comment.

Saltmasters suggested that SB 2445 be amended to require any dock that accommodates boats over 26 feet and sells fuel to be required to have either a pump-out facility and/or a sewage receiving facility for commercial boats with pumping systems already on board. Saltmasters also suggested that SB 2445 be amended to require county, city, and navigation districts to have rules or ordinances to reflect the suggested changes for dock requirements.

Texas Government Code, Chapter 566, prohibits state agencies from lobbying the legislature in an attempt to influence the passage or defeat of a legislative matter. State agencies may provide public information or respond to a request. No changes were made in response to this comment.

GBF thanked the commission for the time and effort spent on the proposed rules.

The commission appreciates the comment.

30 TAC §§321.1 - 321.18

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by TWC or other laws which are necessary and convenient to the exercise of its jurisdiction and powers under TWC or other laws; §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under TWC; §26.011, authorizing the commission to control the quality of water in the state; §26.121, prohibiting the discharge of waste into surface water in the state except as authorized by the commission; and §26.044 (as amended by Senate Bill 2445, 81st Legislature, 2009), authorizing the commission to issue rules concerning the disposal of sewage from boats located or operated on surface water in the state. These repeals are also adopted under the Texas Water Quality Control Act, which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034 as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: May 14, 2010
For further information, please call: (512) 239-6090

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30 TAC §§321.1 - 321.11

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by TWC or other laws which are necessary and convenient to the exercise of its jurisdiction and powers under TWC or other laws; §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under TWC; §26.011, authorizing the commission to control the quality of water in the state; §26.121, prohibiting the discharge of waste into surface water in the state except as authorized by the commission; and §26.044 (as amended by Senate Bill 2445, 81st Legislature, 2009), authorizing the commission to issue rules concerning the disposal of sewage from boats located or operated on surface water in the state. These new sections are also adopted under the Texas Water Quality Control Act, which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034 as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

The adopted new sections implement TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES
SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §§155.1, 155.3, 155.15

The School Land Board (board) adopts amendments to 31 TAC Part 4, Chapter 155, relating to Land Resources, Subchapter A, relating to Coastal Public Lands, §155.1, relating to General Provisions; §155.3, relating to Easements; and §155.15, relating to Fees. The amendments to §155.1 and §155.3 are adopted without changes and the amendments to §155.15 are adopted with changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 7002).

BACKGROUND, REASONED JUSTIFICATION, AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The amendments clarify the rules and memorialize current Board policies with respect to mitigation, fee escalation, and rates for fill. The amendments also amend current definitions, incorporate a new definition for Residential use, Category III, and authorize the board to adopt an escalation schedule for coastal lease and easement fees. These changes are a part of the board's review of 31 TAC Chapter 155, which is being adopted concurrently with the adoption of these amendments.

The adopted amendments will allow the General Land Office to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. Lessees and grantees will be able to calculate formulas for fill with more certainty and will be protected from significant fill rate increases in the event the value of the littoral property increases dramatically. Because these changes essentially mirror the routine actions of the board, the public will be able to maneuver through the application and lease or easement process with more up front knowledge regarding the fees that will be required. The new definition for residential use, Category III provides a mechanism for addressing coastal rental homes, while at the same time allowing these properties to remain in residential, and not commercial, use. The public will also benefit because coastal public land, and therefore, the permanent school fund, will be protected through the amendment incorporating the board's policy of requiring that impacts to coastal public land be performed on coastal public land. Finally, holders of coastal leases or easements will be able to more easily enter into longer-term leases now that the board may adopt a standard rate escalation schedule.

The amendments to §155.1 revise the definition for "commercial activity" to clarify that any activity which is designed to enhance or accommodate a venture associated with a revenue generating activity will be considered commercial, even if the person performing the activity does so without a lessee/permitee's knowledge. The change also clarifies that the new definition of residential use, Category III will not be considered to be a commercial activity, even though it otherwise fits the definition. The amendment revises the definition for "residential use, Category I" to clarify that each lot or parcel may have multiple accessory buildings in addition to one residential dwelling. It adds a definition for "residential use, Category III" to encompass operations where waterfront houses are being used (in whole or in part) as short-term residential rental properties. Finally, conforming numbering changes were made to account for the new definition.

The amendments to §155.3 clarify that easement holders must compensate for unavoidable impacts or damages to coastal public land by paying a resource impact fee, mitigating for impacts, or both. Mitigation for impacts to coastal public land must occur on coastal public land, in line with the board's long-standing policy.

The amendments to §155.15 incorporate the new residential use, Category III term into the rule and clarify that only the fixed rate method for determining fees will be used for residential use, Category II and III instruments. The board may adopt an escalation schedule that will allow for escalation of annual fees based on the term of a coastal lease or easement. For example, in the event the board approves a ten year coastal easement for commercial purposes, the board's escalation schedule could implement the regulatory fee for the first five years but build in an escalation formula to increase the fee over the next five years. This provision implements current board policy and will allow grantees and lessees to secure longer-term easements and leases from the board and reduce agency workloads, because without such a schedule, the lease and easement terms would have to remain short so that the board could regularly amend the fees to account for inflation. The amendments also clarify the rates for fill and incorporate a revised fee for renewals that would increase the fee under the original authorization every five years to 110% of the existing contract rate for residential fill and 120% of the existing contract rate for commercial or industrial fill, consistent with past board action. The adopted version of the rule differs slightly from the proposed version in that the term "fee" in §155.15(b)(4)(H)(i)(IV) has been changed to "contract rate" in order to clarify that the rate included in the instrument, not the fee as listed in the rule, will be used to calculate the increase. The adopted version of the rule also deletes a misleading reference to subclauses (II) and (III) in §155.15(b)(4)(H)(i)(V). These minor changes are merely clarifications and do not change the substance of the rule. This set escalation schedule for fill has the same benefits as one adopted by the board for commercial and industrial coastal leases and easements, but it will also keep rapidly escalating fees resulting from significant increases in appraised values under control. Finally, the amendments to §155.15 make minor necessary changes for clarification.

ENVIRONMENTAL REGULATORY ANALYSIS

The board has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major

environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 155 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The adopted rule amendments are subject to the Coastal Management Program (CMP), 31 TAC §§505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The board has reviewed these actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council. The adopted action is consistent with the applicable CMP goals and policies.

PUBLIC COMMENT

The board did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code §§33.101 - 33.136, relating to the board's ability to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 33, Texas Natural Resources Code.

Texas Natural Resources Code §§33.101 - 33.136 are affected by the adopted amendments.

§155.15. Fees.

(a) General.

(1) Form of payment. Fees may be paid by cash, check or other legal means acceptable to the commissioner.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office (GLO).

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the GLO shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) Board fees and charges. The board is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable. The board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in paragraphs (3) and (4) of this subsection. The greater of the fixed fee or formula rate will be charged except in the calculation of fees for residential use, Category II and residential use, Category III, where only the fixed rate method will be used. The board may adopt an escalation schedule that will allow for escalation of annual fees based on the term of a coastal lease or coastal easement.

(1) Coastal lease charges. The board may grant coastal leases for public purposes as prescribed by the Natural Resources Code, §§33.103(1), 33.105, and 33.109. The filing fee and annual fee shall be negotiable.

(2) Structure registration fee. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure:

(A) filing fee: $25;

(B) annual fee: no charge;

(C) assignment fee: $25;

(D) amendment fee: $25.

(3) Miscellaneous coastal easement fees:

(A) assignment fee: $50;

(B) amendment fee: $50;

(C) late payment fee: 10% of past due amount/$25 minimum.

(4) Coastal easement fees:

(A) piers, docks, and watercraft storage facilities:

(i) residential use, Category I:

(I) filing fee: $25;

(II) annual fee: $.03 per square foot/$25 minimum;

(III) annual fee for more than one of any of the following structures: boatlift, boathouse, covered boat slip, or any oversized personal water craft slip: $250 each;

(ii) residential use, Category II and III:

(I) filing fee: $50;

(II) annual fee: 75% of fee calculated for same use as a commercial activity/$100 minimum;

(iii) commercial:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: $.20 per square foot/$100 minimum;

(iv) other, private non-profit use:

(I) filing fee: $50;

(II) annual fee: negotiable/$100 minimum;

(B) marinas:

(i) Clear Lake:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: $4.00 per boat slip linear foot;

(ii) residential use: Category II and III:

(I) filing fee: $50;

(II) annual fee: 75% of fee calculated for same use as a commercial activity;

(iii) other:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: $3.00 per boat slip linear foot;

(C) wharf:

(i) filing fee: $50;

(ii) evaluation fee: $50;

(iii) annual fee: $.30 per square foot/$100 minimum;

(D) breakwaters, jetties, and groins:

(i) residential--Category I:

(I) filing fee: $25;

(II) annual fee: $.20 per square foot/$25 minimum;

(ii) residential--Category II and III:

(I) filing fee: $50;

(II) annual fee: 75% of fee calculated for same use as a commercial activity/$100 minimum;

(iii) commercial activity:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: $.20 per square foot/$100 minimum;

(E) dredged area:

(i) mineral interest holder:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee:

(-a-) first year fee for a new dredged area: $.02 per square foot/$100 minimum;

(-b-) fee for maintaining a dredged area after first year of easement: $.005 per square foot/$100 minimum;

(ii) residential--Category I:

(I) filing fee: $50;

(II) annual fee:

(-a-) first year fee for a new dredged area: $.03 per square foot/$25 minimum;

(-b-) fee for maintaining a dredged area after first year of easement: $.005 per square foot/$25 minimum;

(iii) residential--Category II and III:

(I) filing fee: $50;

(II) annual fee: 75% of fee calculated for same use as commercial activity/$100 minimum;

(iv) commercial activity:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee:

(-a-) first year fee for a new dredged area: $.05 per square foot/$100 minimum;

(-b-) fee for maintaining a dredged area after first year of easement: $.01 per square foot/$100 minimum;

(F) open encumbered area:

(i) residential--Category I:

(I) filing fee: none;

(II) annual fee: none;

(ii) residential--Category II and III:

(I) filing fee: $50;

(II) annual fee: 75% of fee calculated for same use as commercial activity/$100 minimum;

(iii) commercial activity:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: $.03 per square foot/$100 minimum;

(iv) Other, private non-profit use:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: negotiable/$100 minimum;

(G) basin: commercial and industrial activity:

(i) industrial activity:

(I) filing fee: $50;

(II) annual fee: basin formula, industrial activity;

(III) evaluation fee: $50;

(ii) commercial activity:

(I) filing fee: $50;

(II) annual fee: basin formula, commercial activity;

(III) evaluation fee: $50;

(H) fill area: all commercial, industrial, and residential activity, whether public or private:

(i) fill not in place as of August 15, 1995:

(I) filing fee: $50;

(II) annual fee for fill not previously authorized: $.10 per square foot, $100 minimum, or fill formula, whichever is greater, for residential use;

(III) annual fee for fill not previously authorized: $.20 per square foot, $100 minimum, or fill formula, whichever is greater, for commercial or industrial use;

(IV) annual fee for renewals: 110% of the existing contract rate for residential use, Categories I, II, and III; 120% of the existing contract rate for commercial or industrial use;

(V) annual fee renewals escalation frequency: annual fee for renewals escalates at the end of every 5 years;

(VI) evaluation fee: $50;

(ii) fill (excluding bulkheads) existing but not permitted as of August 15, 1995: $.02 per square foot or $25, whichever is greater;

(I) shoreline stabilization project--filing fee: $25;

(J) concrete stairs, concrete slabs:

(i) residential--Category I:

(I) filing fee: $25;

(II) annual fee: $.03 per square foot/$25 minimum;

(ii) residential--Category II and III:

(I) filing fee: $50;

(II) annual fee: 75% of fee calculated for same use as a commercial activity/$100 minimum;

(iii) commercial activity:

(I) filing fee: $50;

(II) evaluation fee: $50;

(III) annual fee: $.20 per square foot/$100 minimum;

(iv) other, private non-profit use:

(I) filing fee: $50;

(II) annual fee: $100.

(5) Structure (cabin) permits:

(A) fees:

(i) refundable deposit: $200;

(ii) annual fee for all structures excluding piers, docks, and walkways will be calculated at $.60 per square foot per year/$175 minimum;

(iii) contract renewal: $175;

(iv) new contract issuance or transfer of interest approved by the board: $325;

(v) bonus payment for new contract issuance for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: negotiable/minimum to be determined by the board;

(vi) filing fee for competitive bid proposal for permit for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: $50;

(vii) late payment fee: 25% of past due amount;

(B) permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.

(6) Resource Impact Fee:

(A) public use piers and residential piers constructed within guidelines: exempt;

(B) all others: $100 plus $1.00 per square foot of impacted area.

(7) Term. The term for all coastal leases and coastal easements is negotiable. Board approval is required prior to construction.

(8) Rental adjustments--all commercial and industrial easements. At every five-year interval in the term of commercial and industrial easements, the rental fee for the easement will be subject to adjustment. The adjustment, if any, will be in accordance with the then current Fee Schedule as adopted by the Board.

(9) Implementation.

(A) New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to individual use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the GLO, may pay a $50 conversion fee. The easement fee may then be reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the residential activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a residential activity rate will be granted without the payment of the conversion fee.

(B) Additional terms. The commissioner of the GLO may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.

(10) Senior fee freeze. Upon application to the GLO and submission of proof of age by a grantee, fees for coastal easements associated with a single family residence will not be increased after the point in time when the littoral property owner (one person in the case of joint ownership) reaches the age of 65, unless the area of encumbered state land increases or there is a change in use of the coastal public land.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2010.

TRD-201006065

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs, General Land Office

School Land Board

Effective date: November 14, 2010

Proposal publication date: August 13, 2010

For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) adopts the amendment to §4.1, concerning Transportation of Hazardous Materials, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8054).

Adoption of this amendment updates the rule to reflect November 1, 2010 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

No comments were received regarding the adoption of this amendment.

The amendment is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 19, 2010.

TRD-201005989
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Effective date: November 8, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11, §4.20

The Texas Department of Public Safety (the department) adopts the amendments to §4.11 and §4.20, concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8055).

The adoption of the amendment to §4.11 updates the rule to reflect November 1, 2010 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

The adoption of amendments to §4.20 is necessary to reflect the proper title of the Texas Department of Public Safety official designated for notification and assistance requests under the terms of the memorandum of understanding. In addition to the primary official, the change reflects the ability of that official to allow a designee.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
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Proposal publication date: September 3, 2010
For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §15.163

The Texas Department of Public Safety (the department) adopts the repeal of §15.163, concerning Amnesty, Incentive and Indigency Programs, without changes to the proposal as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6798).

Adoption of this repeal is necessary in order to simultaneously adopt a new §15.163 which will provide for an added reduction on all surcharges issued prior to the proposed rule providing drivers the ability to comply with the Driver Responsibility law and maintain driving privileges.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.157.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006031

Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
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Proposal publication date: August 6, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

37 TAC §15.163

The Texas Department of Public Safety (the department) adopts new §15.163, concerning Amnesty, Incentive and Indigency Programs. New §15.163 is adopted with changes to the proposed text as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6799) and will be republished.

Adoption of this new section provides for an added reduction on all surcharges issued prior to the proposed rule, providing drivers the ability to comply with the Driver Responsibility law and maintain driving privileges. These changes promote the department's objective of increasing public safety on the roadways by ensuring the license holder remains in compliance with the law and in compliance with the surcharge program.

The department accepted comment on the proposed rule through September 7, 2010. Written comments were submitted by Rep. Lon Burnam, Rep. Ruth McClendon, Denise Rose, J.D. representing Texas Hospital Association, Amanda Marzullo representing Texas Fair Defense Project, John A. Guest representing Teaching Hospitals of Texas, Texas Criminal Justice Coalition, and 39 individuals. Changes were made to proposed new §15.163 based on the comments received by the department. Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: Regarding §15.163(a)(5) and (6), the Teaching Hospitals of Texas recommended adding the ability to pay the reduced surcharge in partial payments during the amnesty period, and to allow for e-mail notifications in lieu of mailing notices to customers.

RESPONSE: The department agrees with these recommendations. The rule states that payment of the reduced amount must be received by the end of the amnesty period. The department will provide information to applicants on the acceptance of payments in any amount during the amnesty period. The department changed the wording in §15.163(a)(6) from "mailed" to "sent", which is consistent with the indigency program language, to allow for e-mailing notifications to customers.

COMMENT: Regarding §15.163(b), the Texas Hospital Association recommended implementation of the incentive program on a specific date, such as April 1, 2011. Rep. Lon Burnam, and The Texas Criminal Justice Coalition recommended the implementation of the incentive program not be left to the department's discretion.

RESPONSE: The department disagrees with these comments. The proposed language allows the department to implement the incentive program upon completion of the fiscal analysis of the amnesty and indigency programs.

COMMENT: Regarding §15.163(b)(2) and (3), the Texas Fair Defense Project recommended relief to other low-income drivers by amending the incentive program to apply to individuals living above 125% but below 300% of the federal poverty guidelines. It further recommended the removal of the reduction for payment of the surcharges in full, and only implementing the reduction of subsequent years for the low-income drivers. They assert that this would allow the department to implement the incentive program immediately, and would not result in the estimated fiscal impact of the proposed incentive program.

RESPONSE: The department agrees with the recommendation for providing an incentive to low-income drivers, and has amended the incentive program by adding the new criterion for eligibility as paragraph (2) of subsection (b) which results in the renumbering of the subsequent paragraphs within subsection (b). The department does not agree with removal of the reduction for payment of surcharges in full, as it provides low-income drivers an additional option for receiving a reduction and complying with all three surcharges immediately.

COMMENT: Regarding §15.163(b)(3)(B) - (D), the Texas Hospital Association recommended clarification of the timeframe for payment of a reduced surcharge amount based on the date the individual receives notification that a surcharge is due under the Driver Responsibility Program.

RESPONSE: The department is in agreement with this public comment, and has amended the language to specify the time period begins from the date of the surcharge notice.

COMMENT: Regarding §15.163(c), the Teaching Hospitals of Texas submitted a comment supporting the indigency program, and recommended applications be made available online and in all driver license offices.

RESPONSE: The department agrees with the recommendations, and the rule already provides for applications to be available online. The department has added the website address where the application is located online and the department will also make applications available in the driver license offices.

COMMENT: Regarding §15.163(c)(1), Rep. Lon Burnam, The Texas Fair Defense Project, and The Texas Criminal Justice Coalition recommended the waiver of the surcharge under the indigency program to be the same as the statutory waiver of surcharges by courts under Texas Transportation Code, §708.158.

RESPONSE: The department is not in agreement with this comment. A waiver of the surcharges is not authorized under Texas Transportation Code, §708.157, therefore the department cannot implement this suggestion.

COMMENT: Regarding §15.163(c), Rep. Lon Burnam recommended the reduction of surcharges for individuals living at or below 250% of the federal poverty level and Rep. Ruth McClendon recommended the department define the indigency level as that adopted by the Health and Human Services Commission for Medicaid eligibility rather than 125%.

RESPONSE: The department is not in agreement with these comments. Texas Transportation Code, §708.158, creates an indigency provision administered by the court at the time of disposition for an offense. This indigency provision defines indigency as living at or below 125% of the poverty level, which is consistent with the definition proposed by the department in §15.163(c).

COMMENT: Regarding §15.163(c)(1), the Texas Fair Defense Project recommended relief to other low-income drivers be limited to individuals living above 125% but below 300%, or to be based on income alone, rather than individuals with a 50% debt-to-income ratio because this could include individuals whose income is greater than 300% of the federal poverty guidelines.

RESPONSE: The department recognizes that the determination of indigency based on a debt-to-income ratio can have the unintended consequence of offering a reduction to individuals who have the ability to comply, and has amended the indigency program by removing this criterion.

COMMENT: Regarding §15.163(c)(2), the Texas Criminal Justice Coalition recommended removing the application notarization requirements to more efficiently serve those eligible and minimize administrative burdens.

RESPONSE: The department is not in agreement with this comment. The use of a sworn affidavit is an accepted practice by state and federal courts. The sworn affidavit eliminates the need for supporting documents with each application, which would require extensive resources to review. Furthermore, it allows for prosecution of individuals who attempt to receive a reduction by submitting a fraudulent application.

COMMENT: Regarding §15.163(c)(7), the Texas Criminal Justice Coalition recommended extending the requirement for new applications to one year to more efficiently serve those eligible and minimize administrative burdens.

RESPONSE: The department is not in agreement with these comments, as an individual's status as indigent can change. The reapplication process after 90 days reduces the burden on the individual by not requiring a new application for each new surcharge, while still allowing the department to verify that the indigent status has not changed.

Additionally, the department has made the following nonsubstantive changes to §15.163, for the purposes of clarity:

Regarding §15.163(a), the words "amnesty program" have been added at the beginning of the subsection to easily identify the name of the program.

Regarding §15.163(a)(2), the website address and telephone number to complete the application for amnesty have been added to facilitate the application process.

Regarding §15.163(b), the words "incentive program" have been added at the beginning of the subsection to easily identify the name of the program.

Regarding §15.163(b)(3)(A), the website address to obtain an online application and the option to pick up the application at any driver license office has been added to facilitate the application process.

Regarding §15.163(c), the words "indigency program" have been added at the beginning of the subsection to easily identify the name of the program.

Regarding §15.163(c)(2), the website address to obtain an online application and the option to pick up the application at any driver license office has been added to facilitate the application process.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §708.157(a), which authorizes the department to establish a periodic amnesty program for holders of a driver's license on which a surcharge has been assessed for certain offenses; Texas Transportation Code, §708.157(b), which authorizes the department to establish an incentive program for holders of a driver's license on which a surcharge has been assessed for certain offenses; and Texas Transportation Code, §708.157(c), which requires the department to establish an indigency program for holders of a driver's license on which a surcharge has been assessed for certain offenses.

§15.163. Amnesty, Incentive and Indigency Programs.

(a) Amnesty program. The department is authorized to provide for a periodic amnesty program under the Driver Responsibility Program, Texas Transportation Code, §708.157(a). Periodic amnesty reductions will be offered at the department's discretion, and the public will be notified of each amnesty period.

(1) Amnesty will apply to individuals who have been in default for a specified amount of time prior to the announcement of amnesty. The department will determine the amount of time in default for each amnesty period.

(2) To be eligible for the amnesty reduction, each individual will be required to complete an application online at www.txsurchargeonline.com or by telephone at 1-800-688-6882. Each applicant eligible for amnesty will be required to pay 10% of the total amount of surcharges assessed, not to exceed $250.

(3) The total amount is based on all offenses on the driver record at the beginning of each amnesty period, including annual surcharges that have not been assessed for the offenses. If a new offense is reported and a new surcharge assessed after the beginning of the amnesty period, the reduction will not apply to the new surcharge.

(4) Once the department determines the applicant is eligible for amnesty, the department will rescind the suspension of driving privileges for each applicant that receives amnesty.

(5) Payment of the reduced amount must be received by the end of the amnesty period.

(6) A notice will be sent to each applicant receiving amnesty and will provide the last date to pay and the balance due.

(7) If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(A) If the prior payment(s) is less than the reduced payment, the driver will be required to pay only the difference.

(B) If prior payment(s) exceeds the reduced payment, the driver will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

(8) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

(9) If the reduced payment is received after the end of each amnesty period, the payment will be applied to the oldest outstanding surcharge account(s), and the individual must comply with the original surcharge assessment(s).

(10) An individual will be eligible to receive amnesty only once every three years.

(b) Incentive program. The department is authorized to provide for an incentive program under the Driver Responsibility Program, Texas Transportation Code, §708.157(b). The incentive program is not implemented with the adoption of the rule but will be implemented at the department's discretion.

(1) The incentive program will consist of two separate programs for reductions. The first program is a one-time reduced payment of all three years of surcharges, and the second program is a reduction of subsequent year(s) of surcharges for maintaining compliance with the prior year(s) surcharge requirement.

(2) For purposes of the incentive program, eligibility is defined as an individual living above 125% of the poverty level as defined annually by the United States Department of Health and Human Services but less than 300% of the poverty level. An individual must meet this definition to be eligible for a reduction. The determination of eligibility will be made by the department or its designee.

(3) Each individual assessed a surcharge may make a one-time payment for all three years of surcharges at a reduced amount to receive full compliance with the surcharge requirement.

(A) To request a reduction of the surcharge under this section, an individual assessed a surcharge must submit the department approved application. The application must be completed in full prior to submission. The application is available online at www.txsurchargeonline.com or may be picked up in person at any driver license office.

(B) The applicant may pay 50% of all three years of surcharges assessed for each offense within 30 days of the date of the surcharge notice to receive full compliance.

(C) The applicant may pay 60% of all three years of surcharges assessed for each offense within 60 days of the date of the surcharge notice to receive full compliance.

(D) The applicant may pay 70% of all three years of surcharges assessed for each offense within 90 days of the date of the surcharge notice to receive full compliance.

(E) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

(4) Each individual assessed a surcharge may receive a reduction on subsequent surcharge assessments for compliance with the annual surcharge. The reduction will be automatic at the time of the annual review of the surcharge.

(A) If the first year surcharge for each offense is paid in full, the second year surcharge will automatically be reduced by 50% of the annual surcharge amount.

(B) If the second year is paid in full, the third year will automatically be reduced by 75% of the annual surcharge amount.

(C) Each annual surcharge must be paid in full prior to the next annual surcharge to receive the reduction.

(D) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

(c) Indigency program. The department is required to provide for an indigency program under the Driver Responsibility Program, Texas Transportation Code, §708.157(c).

(1) For purposes of the Driver Responsibility Program, indigency is defined as living at or below 125% of the poverty level as defined annually by the United States Department of Health and Human Services. An individual must meet the definition of indigency to be eligible for a reduction. The determination of indigency will be made by the department or its designee.

(2) To request a reduction of the surcharge under this section, each individual must submit the department approved application. The application must be completed in full and notarized prior to submission. Each applicant eligible for indigency will be required to pay 10% of the total amount of surcharges assessed, not to exceed $250. The application is available online at www.txsurchargeonline.com or may be picked up in person at any driver license office.

(3) The department may contract with a third-party for the verification of the information submitted on the application.

(4) A notice will be sent to each applicant determined eligible for the indigency reduction. The notice will provide the last date to pay and the balance due, and payment of the reduced amount must be received within 180 days from the date of the notice. The indigency period starts on the date of the notice and ends 180 days later.

(5) The total amount is based on all offenses on the driver record at the beginning of the indigency period, including annual surcharges that have not been assessed for the offenses.

(6) During the 180-day payment period, the department will rescind the suspension of driving privileges. If payment of the reduced amount is not received within 180 days, the suspension of driving privileges will be reinstated. The reduced amount will apply until it is paid in full.

(7) If a new offense that results in a surcharge is reported 90 days or more from the notice date, the individual must submit a new application to determine continued eligibility for an indigency reduction. Surcharges due for the new offense reported within 90 days will be included in the total amount of surcharges reduced under paragraph (5) of this subsection. A notice will be sent to the applicant and will provide the last date to pay and the new balance due. Payment for the new balance must be received within the 180-day payment period set out in the original notice.

(8) If the applicant is not eligible for a reduction under this section, a letter of denial will be sent to the individual.

(9) If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(A) If the prior payment(s) is less than the reduced payment, the applicant will be required to pay only the difference.

(B) If prior payment(s) exceeds the reduced payment, the applicant will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

(10) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

CHAPTER 27. CRIME RECORDS
SUBCHAPTER K. FEDERAL FIREARMS DISABILITIES

37 TAC §§27.141 - 27.144

The Texas Department of Public Safety (the department) adopts new §§27.141 - 27.144, concerning Federal Firearms Disabili-

ties, without changes to the proposed text as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6801).

Adoption of these new sections is necessary to clarify the methods by which the clerk of the court may report the disabilities to the department and the methods by which the subject of the disability may access the record and submit corrections.

No comments were received regarding the adoption of these new sections.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §411.052, which authorizes the department to establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation and a procedure to correct the information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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CHAPTER 36. METALS REGISTRATION

37 TAC §§36.1 - 36.21

The Texas Department of Public Safety (the department) adopts new §§36.1 - 36.21, concerning Metals Registration, without changes to the proposed text as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6803).

Adoption of these new sections is necessary to administer Chapter 1956 of the Texas Occupations Code.

No comments were received regarding the adoption of these new sections.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act; 80th Legislature, 2007, Senate Bill 1879; 81st Legislature, 2009, Senate Bill 904; and Texas Health and Safety Code, §481.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201006034
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Effective date: November 11, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 424-5848

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §427.7

The Texas Commission on Fire Protection (Commission) adopts amendments to §427.7, concerning Protective Clothing. The amendments are adopted with changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6641) and will be republished.

The amendments to §427.7 will allow a chief training officer of a training facility to provide a student with the protective clothing that is suitable for the type of fire the student is being trained for during live-fire training for aircraft rescue.

The adopted amendments will ensure the safety of the student by providing them with the proper protective clothing for the task they are being asked to perform.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under §419.040 of the Texas Government Code.

§427.7. Protective Clothing.

Each and every set of protective clothing, including proximity clothing, that will be used during the course of instruction for a commission approved fire protection personnel curriculum shall comply with §435.1 of this title (relating to Protective Clothing). This rule applies whether the protective clothing is provided by the academy or the trainee.

(1) Protective clothing and elements no longer in use to the organization for emergency operations service, but are not contaminated, defective, or damaged, may be used for training that does not involve live fire training, provided such clothing and elements are appropriately marked to be easily recognized.

(2) Protective clothing used for aircraft rescue, live fire training, shall be suitable for the type of fire the student is being trained for and shall be determined by the chief training officer of the training facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 22, 2010.

TRD-201006052

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: November 11, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 936-3813

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plans

Department of Assistive and Rehabilitative Services

Title 40, Part 2

TRD-201006105
Filed: October 27, 2010

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Texas Groundwater Protection Committee

Title 31, Part 18

TRD-201006089
Filed: October 26, 2010

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Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission (Commission) will review and consider for readoption, revision, or repeal Chapter 91, §91.501 (Director Eligibility and Disqualification), §91.502 (Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures), §91.503 (Change in Credit Union President), §91.510 (Bond and Insurance Requirements), §91.515 (Financial Reporting), §91.516 (Audits and Verifications), §91.601 (Share and Deposit Accounts), §91.602 (Solicitation and Acceptance of Brokered Deposits), §91.608 (Confidentiality of Member Records), and §91.610 (Safe Deposit Box Facilities) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Texas Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is December 15, 2010.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201006087
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 26, 2010

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Adopted Rule Reviews

Texas Groundwater Protection Committee

Title 31, Part 18

The Texas Groundwater Protection Committee (TGPC or committee) files this notice of review and readoption of Chapter 601, Groundwater Contamination Report.

This review of Chapter 601 is adopted in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

The TGPC was created by the 71st Legislature in 1989 to bridge gaps between existing state groundwater programs and to optimize water quality protection by improving coordination among agencies involved in groundwater activities. The committee's rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. These rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report describes: the current status of ground-

water monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

FINAL ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The committee conducted a review and determined that the reasons for the rules in Chapter 601 continue to exist. Chapter 601 is necessary because TWC, §26.406 specifically provides that the committee shall adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report required by this section, and TWC, §26.408 specifically directs the committee to designate the form and content of the notice of groundwater contamination mailed to owners of private drinking water wells and to groundwater conservation districts. To meet these statutory requirements, the rules provide the definitions and applicability for maintaining public files on groundwater contamination cases and contents of the annual Joint Groundwater Monitoring and Contamination Report required by TWC, §26.406(d) and the form and content of the mailed notice required by TWC, §26.408(c).

PUBLIC COMMENT

The proposed review of Chapter 601 was published for comment in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6699). The comment period closed on August 30, 2010. No comments were received.

TRD-201006088
Cary Betz, P.G.
Designated Chairman
Texas Groundwater Protection Committee
Filed: October 26, 2010

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School Land Board

Title 31, Part 4

Following the publication of the notice of intent to review in the June 11, 2010, issue of the *Texas Register* (35 TexReg 5082), the School Land Board (SLB) has reviewed and considered for readoption, revision, or repeal, all sections of Chapter 155 (relating to Land Resources) of Title 31, Part 4 of the Texas Administrative Code.

The SLB considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

During its review, the SLB determined that the agency rulemaking authority remains in effect and the necessity of these rules continues to exist. The SLB intends to readopt *with amendments* 31 TAC §§155.1, 155.3, and 155.15. Revisions to these rules are necessary to update agency references and definitions, to ensure consistency with governing statutes and clarify current practices, to correct typographical errors, and to delete language that provides no additional guidance or direction than that reflected in the governing statutes. The remaining sections of 31 TAC Chapter 155 are readopted *without change.*

Through a concurrent notice of final adoption, the SLB adopts amendments to 31 TAC §§155.1, 155.3, and 155.15 elsewhere in this issue.

This completes the SLB's review of 31 TAC Chapter 155.

TRD-201006063
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs, General Land Office
School Land Board
Filed: October 25, 2010

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Policies and Private Activity Bond Program Request for Proposals for 2011

The Texas State Affordable Housing Corporation ("TSAHC") is a self-supporting, not-for-profit organization that serves the housing needs of low, very low and extremely low-income Texans who do not have comparable housing options through conventional financial channels.

TSAHC's Board approved the publication of drafts for the 2011 Private Activity Bond Program Request for Proposals and 2011 Multifamily 501(c)(3) bond Program Policies for public comment to our website at: http://www.tsahc.org/multi.

TSAHC is accepting written comments on the drafts until November 17, 2010, and will welcome public comments at our November 18, 2010, Board meeting. Comments should be sent in writing to:

David Danenfelzer

Manager of Development Finance

Texas State Affordable Housing Corporation

P.O. Box 12637

Austin, Texas 78711

E-mail: ddanenfelzer@tsahc.org

TRD-201006085
David Long
President
Texas State Affordable Housing Corporation
Filed: October 26, 2010

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Texas Animal Health Commission

Correction of Error

The Texas Animal Health Commission adopted amendments to 4 TAC §51.8, concerning entry requirements. The adopted rulemaking was published with changes in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9691).

Due to an error in the adoption notice, the section heading for §51.8 should be "Cattle" rather than "Entry Requirements".

The section heading should read as follows.

§51.8. Cattle.

TRD-201006068

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 20, 2010, through October 22, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council's web site. The notice was published on the web site on October 27, 2010. The public comment period for this project will close at 5:00 p.m. on November 26, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Independence Bank; Location: The project site is located in Offatts Bayou, at 7909 Broadway, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Galveston, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 319468; Northing: 3240730. Project Description: The applicant proposes to construct a commercial marina for the docking and permanent storage of recreational boats. Such activities include a 2640-square-foot main walkway. Twenty, 248-square-foot finger piers will extend from two, 2,688-square-foot access piers. A floating central pier and breakwater, totaling 6,688 square feet, is also included. A bulkhead is proposed. However, it will be constructed above the High Tide Line and is not subject to our jurisdiction. No maintenance dredging is proposed. CMP Project No.: 11-0189-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00784 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.state.tx.us. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201006093
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: October 26, 2010

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/01/10 - 11/07/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/01/10 - 11/07/10 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201006078
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 25, 2010

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 6, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 6, 2010.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: American Heritage Housing Corporation; DOCKET NUMBER: 2010-0860-PWS-E; IDENTIFIER: RN101224046; LOCATION: Harris County; TYPE OF FACILITY: mobile home park; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer by July 1 of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers; PENALTY: $349; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Brazoria County Municipal Utility District Number 21; DOCKET NUMBER: 2010-1176-MWD-E; IDENTIFIER: RN102923653; LOCATION: Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014222001, Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for five-day biochemical oxygen demand and total suspended solids; PENALTY: $14,300; ENFORCEMENT COORDINATOR: Martha Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Capital Metropolitan Transportation Authority; DOCKET NUMBER: 2010-1206-EAQ-E; IDENTIFIER: RN104008966; LOCATION: Austin, Williamson County; TYPE OF FACILITY: train station and a park and ride; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j), by failing to obtain approval for a modification of a previously approved Edwards Aquifer protection plan; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(4) COMPANY: Charania, Inc.; DOCKET NUMBER: 2010-0933-PST-E; IDENTIFIER: RN102016904; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism; PENALTY: $3,675; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: ECO-KEEPER, LLC dba CENTRAL DISPOSAL SERVICE; DOCKET NUMBER: 2010-0594-MSW-E; IDENTIFIER: RN105905376; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: waste hauler; RULE VIOLATED: 30 TAC §330.7(a), by failing to obtain a permit or other authorization prior to conducting storage, processing, or disposal of municipal solid waste (MSW); PENALTY: $1,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3500; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(6) COMPANY: Enterprise Products Operating, LLC; DOCKET NUMBER: 2010-0926-AIR-E; IDENTIFIER: RN102984911; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: gas processing; RULE VIOLATED: Texas Health and Safety Code (THSC), §382.085(a), by failing to prevent unauthorized emissions; and 30 TAC §122.121 and §122.130(b)(2) and THSC, §382.085(b), by failing to submit a federal operating permit (FOP) application; PENALTY: $22,150; Supplemental Environmental Project (SEP) offset amount of $11,075 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Enterprise Products Operating, LLC; DOCKET NUMBER: 2010-1261-AIR-E; IDENTIFIER: RN102580834; LOCATION: Houston, Harris County; TYPE OF FACILITY: barge loading dock; RULE VIOLATED: 30 TAC §101.201(b) and THSC, §382.085(b), by failing to properly report an emissions event; and 30 TAC §106.4(c), Permit by Rule Registration Number 32899, and THSC, §382.085(b), by failing to maintain all emissions control equipment in good condition and operated properly; PENALTY: $1,320; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Esperanza Water Service Company, Inc.; DOCKET NUMBER: 2010-1349-PWS-E; IDENTIFIER: RN101207371; LOCATION: Hudspeth County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.44((h)(4), by failing to ensure backflow prevention assemblies which are installed to provide protection against health hazards are tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester; PENALTY: $221; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2010-0976-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Air Permit Number 3452 and PSD-TX-302M2, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $26,950; SEP offset amount of $10,780 applied to Houston Regional Monitoring Corporation - *HRMC Houston Area Air Monitoring;* ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Danny J. Dolen dba Green Lake Estates Water Supply; DOCKET NUMBER: 2010-0908-PWS-E; IDENTIFIER: RN104443734; LOCATION: Limestone County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to email or directly deliver one copy of the CCR to each bill paying customer by July 1 of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers; PENALTY: $437; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2010-1076-AIR-E; IDENTIFIER: RN100212463; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 54330, SC Number 1, FOP Number O-02352, Special Terms and Condition Number 5, and THSC, §382.085(b), by failing to maintain emissions below the allowable emission limits for ammonia; PENALTY: $17,100; SEP offset amount of $13,680 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: KM Liquids Terminals, LLC; DOCKET NUMBER: 2010-1205-AIR-E; IDENTIFIER: RN100224815; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum bulk storage plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5171, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,550; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Lawn Appeal, LLC; DOCKET NUMBER: 2010-1034-LII-E; IDENTIFIER: RN105944805; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: landscape and grounds maintenance company; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and (d) and the Code, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration unless they possess a current license or registration, or unless they employ an individual who holds a current license; PENALTY: $450; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Lukes Mobile Home Park, Inc.; DOCKET NUMBER: 2010-0037-PWS-E; IDENTIFIER: RN101271245; LOCATION: Parker County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide a total well capacity of 0.6 gallons per minute per connection; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant changes or additions to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a total pressure tank capacity of 20 gallons per connection; and 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket Number 2007-0621-PWS-E, Ordering Provision Number 2.c.iii; by failing to provide well completion data; PENALTY: $1,313; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 490-3096; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Millspaugh Operations, Inc.; DOCKET NUMBER: 2010-1417-PWS-E; IDENTIFIER: RN101251031; LOCATION: Crockett County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to conduct routine sampling; 30 TAC §290.109(f)(3) and §290.122(b)(2)(B) and THSC, §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform and by failing to provide public notification of the exceedance of the MCL for total coliform; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to conduct increased monitoring; PENALTY: $3,093; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(16) COMPANY: MURPHY OIL USA, INC. dba Murphy USA 7437; DOCKET NUMBER: 2010-1025-PST-E; IDENTIFIER: RN105205561; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.222(1) and THSC, §382.085(b), by failing to equip each fill pipe with removable or permanent factory-constructed drop tubes; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.246(4) and (7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §334.48(e), by failing to ensure that all release detection equipment installed as part of a UST system is maintained

in good operating condition; and 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detector at least once per year for performance and operational reliability; PENALTY: $19,029; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: NABIL ENTERPRISES, INC. dba Shop N Go 9; DOCKET NUMBER: 2010-1083-PST-E; IDENTIFIER: RN101433993; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects that would impair the effectiveness of the system; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; 30 TAC §334.48(a), by failing to ensure that the system is operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems; 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects that would impair the effectiveness of the system; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; PENALTY: $8,650; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Place Properties Development Services, LLC; DOCKET NUMBER: 2010-1125-EAQ-E; IDENTIFIER: RN105474183; LOCATION: Bexar County; TYPE OF FACILITY: multi-family residential construction site; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j) and Water Pollution Abatement Plan (WPAP) Number 13-08030602 Standard Conditions Number 4, by failing to obtain approval of a modification to a WPAP prior to constructing the modification; 30 TAC §213.4(k) and WPAP Number 13-08030602 Standard Conditions Number 15, by failing to maintain permanent best management practices after construction and maintain the sand filter basin; and 30 TAC §213.4(k) and WPAP Number 13-080390602 SC Number I, by failing to comply with the conditions of the approved WPAP by failing to construct the sand filter basin as represented in its application; PENALTY: $2,650; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Jose Marco Rico, Martha Rico and Regina Tovar; DOCKET NUMBER: 2010-0442-MSW-E; IDENTIFIER: RN105569974; LOCATION: Tenaha, Shelby County; TYPE OF FACILITY: residential property with an unauthorized dump; RULE VIOLATED: 30 TAC §330.15(a)(2) and (c), by failing to prevent the creation of a nuisance by unauthorized disposal of MSW; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: RIMO, INC. dba Motion 30; DOCKET NUMBER: 2010-1082-PST-E; IDENTIFIER: RN101537660; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: City of Rosebud; DOCKET NUMBER: 2010-1285-MWD-E; IDENTIFIER: RN101918423; LOCATION: Falls County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010731001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for ammonia nitrogen (NH_3N) and chlorine; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Thomas B. Stucker; DOCKET NUMBER: 2010-1024-PWS-E; IDENTIFIER: RN101272391; LOCATION: Montgomery County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: $10,612; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: City of Teague; DOCKET NUMBER: 2010-1067-PWS-E; IDENTIFIER: RN101417012; LOCATION: Teague, Freestone County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.41(c)(3)(L), by failing to provide a well blow-off line that terminates in a downward direction; 30 TAC §290.43(c)(4), by failing to equip all ground storage tanks with a liquid level indicator; 30 TAC §290.43(c)(1), by failing to equip the roof vents on all ground storage tanks with 16-mesh or finer corrosion-resistant screens; 30 TAC §290.41(c)(1)(D), by failing to prevent livestock from being within 50 feet of a water supply well; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system; 30 TAC §290.46(m)(1)(A), by failing to inspect the ground storage tanks on an annual basis; 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements for all PWS wells; 30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to keep on file and make available for review an up-to-date record of water works operation and maintenance activities for operator review and reference; 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazards exists; and 30 TAC §290.42(e)(4)(C), by failing to provide screened vents for all enclosures in which gas chlorine is being stored or fed; PENALTY: $4,092; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: City of Waller; DOCKET NUMBER: 2010-1062-MWD-E; IDENTIFIER: RN102844834; LOCATION: Waller County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010310001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for NH_3N; PENALTY: $1,990; ENFORCEMENT COORDINATOR: J. R. Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Yeung Realty, Inc. dba Stop & Go 1 and Stop & Go 2; DOCKET NUMBER: 2010-0805-PST-E; IDENTIFIER: RN102365939 and RN102363173; LOCATION: Victoria and Port Lavaca; Victoria and Calhoun Counties; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and §334.54(c)(1) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at facility one and two; PENALTY: $7,018; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201006086
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 26, 2010

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Enforcement Orders

A default order was entered regarding Joe David Gilmore, Docket No. 2007-1657-MSW-E on October 18, 2010 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Barbara Perkins, Docket No. 2008-1201-PST-E on October 18, 2010 assessing $2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Chico, Docket No. 2008-1953-MWD-E on October 18, 2010 assessing $208,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2009-0401-AIR-E on October 19, 2010 assessing $291,649 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Thomson Enterprises, Inc. dba Bender Texaco, and Afzal Shekhandi dba Bender Texaco, Docket No. 2009-0874-PST-E on October 18, 2010 assessing $20,116 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining L.P., Docket No. 2009-1158-AIR-E on October 19, 2010 assessing $10,501 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical L.P. and Shell Oil Company, Docket No. 2009-1300-AIR-E on October 19, 2010 assessing $51,570 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammed A. Ahmed dba Cypress Chevron Gas Station, Docket No. 2009-1360-PST-E on October 18, 2010 assessing $9,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding B & H GROUP, INC. dba Kountry Food Store #3, Docket No. 2009-1453-PST-E on October 18, 2010 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Belvan Corp., Docket No. 2009-1490-AIR-E on October 19, 2010 assessing $7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Stoneham Mill, Inc., Docket No. 2009-1590-AIR-E on October 19, 2010 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shamsuddin Lassi dba AJ's 3, Suleman Shamsuddin dba AJ's 3, and Wazir A. Dhanani dba AJ's 3, Docket No. 2009-1715-PST-E on October 18, 2010 assessing $18,021 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amistad Lake Developments, Inc., Docket No. 2009-2079-PWS-E on October 18, 2010 assessing $1,380 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Salvador Farias III, Docket No. 2010-0026-EAQ-E on October 19, 2010 assessing $13,260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENDEAVOR WALL HOMES, LLC, Docket No. 2010-0082-WQ-E on October 18, 2010 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nir Gozlan and Gadi Shushan, Docket No. 2010-0119-PST-E on October 18, 2010 assessing $17,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gemini Ventures Inc. dba Royal Carwash, Docket No. 2010-0140-PST-E on October 18, 2010 assessing $6,305 in administrative penalties with $1,261 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joe Maldonado, Docket No. 2010-0146-MSW-E on October 18, 2010 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Bayou Service Company and Cypress Lakes Property Owners' Association, Inc., Docket No. 2010-0174-MWD-E on October 18, 2010 assessing $7,590 in administrative penalties with $1,518 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Benjamin D. Baize, Docket No. 2010-0198-LII-E on October 19, 2010 assessing $4,561 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding James L. Wells dba Wells Drive In, Docket No. 2010-0269-PST-E on October 18, 2010 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUCKY LADY OIL COMPANY dba Lucky Lady 23, Docket No. 2010-0285-PST-E on October 18, 2010 assessing $14,326 in administrative penalties with $2,865 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2010-0315-AIR-E on October 19, 2010 assessing $29,600 in administrative penalties with $5,920 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanson Aggregates LLC, Docket No. 2010-0333-IWD-E on October 19, 2010 assessing $11,220 in administrative penalties with $2,244 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAVELLE FAVCO CRANES USA, INC., Docket No. 2010-0339-AIR-E on October 19, 2010 assessing $3,345 in administrative penalties with $669 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Natural Gas Pipeline Company of America LLC, Docket No. 2010-0357-AIR-E on October 19, 2010 assessing $9,375 in administrative penalties with $1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greenwood Motor Lines, Inc. dba R & L Carriers, Docket No. 2010-0375-WQ-E on October 18, 2010 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2010-0381-AIR-E on October 19, 2010 assessing $97,167 in administrative penalties with $19,433 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Byung Gue Lee dba Caspers Cleaners, Docket No. 2010-0386-DCL-E on October 19, 2010 assessing $5,087 in administrative penalties with $1,017 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Central Texas Highway Constructors, LLC, Docket No. 2010-0389-WQ-E on October 18, 2010 assessing $23,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dr. Alejandro Garcia II, Docket No. 2010-0425-EAQ-E on October 19, 2010 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-0448-AIR-E on October 19, 2010 assessing $40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2010-0477-AIR-E on October 19, 2010 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodney Wayne Winters dba Craftsman Marble, Docket No. 2010-0488-AIR-E on October 19, 2010 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samuel Gomez dba Gomez Trucking, Docket No. 2010-0492-WQ-E on October 18, 2010 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RUH Enterprises, Inc. dba Horizon Food Mart, Docket No. 2010-0502-PST-E on October 18, 2010 assessing $12,981 in administrative penalties with $2,596 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc., Docket No. 2010-0528-MWD-E on October 18, 2010 assessing $26,260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ledezma Ready-Mix, LLC, Docket No. 2010-0532-MLM-E on October 19, 2010 assessing $5,544 in administrative penalties with $1,108 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & G Dirt & Construction LLC, Docket No. 2010-0540-MLM-E on October 18, 2010 assessing $2,042 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON PHILLIPS CHEMICAL COMPANY L.P., Docket No. 2010-0550-UIC-E on October 18, 2010 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, L.P., Docket No. 2010-0555-AIR-E on October 19, 2010 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy Todd Hennard dba Devery Sprinkler and Drainage, Docket No. 2010-0557-LII-E on October 19, 2010 assessing $237 in administrative penalties with $47 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Champion Technologies, Inc., Docket No. 2010-0570-IWD-E on October 19, 2010 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jason's Lawn Care and Landscaping, Inc., Docket No. 2010-0598-LII-E on October 19, 2010 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge G & P (North Texas) L.P., Docket No. 2010-0627-AIR-E on October 19, 2010 assessing $3,900 in administrative penalties with $780 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Intercontinental Terminals Company LLC, Docket No. 2010-0632-AIR-E on October 19, 2010 assessing $5,226 in administrative penalties with $1,045 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hieu Bui dba Ball Park Shell, Docket No. 2010-0637-PST-E on October 18, 2010 assessing $4,658 in administrative penalties with $931 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Refining and Chemicals Company L.P., Docket No. 2010-0644-AIR-E on October 19, 2010 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Horseshoe Bay Resort, Ltd., Docket No. 2010-0647-PST-E on October 18, 2010 assessing $12,531 in administrative penalties with $2,505 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P., Docket No. 2010-0662-AIR-E on October 19, 2010 assessing $3,775 in administrative penalties with $755 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steven M. Sluder dba "A" Affordable Landscaping, Docket No. 2010-0665-LII-E on October 19, 2010 assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tawakoni Waste Water Corporation, Docket No. 2010-0666-MWD-E on October 18, 2010 assessing $10,107 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ESSA INC. dba East Freeway Chevron, Docket No. 2010-0692-PST-E on October 18, 2010 assessing $2,897 in administrative penalties with $579 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Boyd, Docket No. 2010-0699-MWD-E on October 18, 2010 assessing $6,360 in administrative penalties with $1,272 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dorothy Manoy, Docket No. 2010-0726-MLM-E on October 19, 2010 assessing $2,191 in administrative penalties with $438 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 7-ELEVEN, INC. dba 7-Eleven 26381, Docket No. 2010-0727-PST-E on October 18, 2010 assessing $3,301 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Praxair, Inc., Docket No. 2010-0743-IWD-E on October 19, 2010 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Alan Boskind dba Oasis Water System, Docket No. 2010-0748-PWS-E on October 18, 2010 assessing $2,011 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Deal, Docket No. 2010-0749-MWD-E on October 18, 2010 assessing $7,670 in administrative penalties with $1,534 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLDEN SPREAD REDI-MIX, INC., Docket No. 2010-0761-IWD-E on October 19, 2010 assessing $4,550 in administrative penalties with $910 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazoria County, Docket No. 2010-0762-PST-E on October 18, 2010 assessing $4,425 in administrative penalties with $885 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tenaha, Docket No. 2010-0778-MWD-E on October 18, 2010 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Oda, Docket No. 2010-0782-WOC-E on October 18, 2010 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Lewis Allen, Docket No. 2010-0790-MWD-E on October 18, 2010 assessing $6,420 in administrative penalties with $1,284 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUNRISE FUEL, INC. dba Sunrise Fuel Mobil, Docket No. 2010-0803-PST-E on October 18, 2010 assessing $4,391 in administrative penalties with $878 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED PARCEL SERVICE, INC., Docket No. 2010-0808-PST-E on October 18, 2010 assessing $3,025 in administrative penalties with $605 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grant Road Public Utility District, Docket No. 2010-0817-MWD-E on October 18, 2010 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reed Parvin dba Parvin Landscaping, Docket No. 2010-0841-LII-E on October 19, 2010 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kelton Independent School District, Docket No. 2010-0845-PWS-E on October 18, 2010 assessing $1,562 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kendall Speight dba Hook-N-Bull Oilfield Service, Docket No. 2010-0851-SLG-E on October 18, 2010 assessing $2,560 in administrative penalties with $512 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.E., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John P. Davis dba Honey Creek Restaurant, Docket No. 2010-0981-PWS-E on October 18, 2010 assessing $342 in administrative penalties with $68 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Jeanette Adams, Docket No. 2009-0492-MSW-E on October 25, 2010 assessing $2,500 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Clarence Nolan, Docket No. 2009-1347-MLM-E on October 19, 2010 assessing $10,758 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding EJO Enterprises, Inc. dba Super Saver Cleaners, Docket No. 2010-1247-DCL-E on October 19, 2010 assessing $100 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Good Time Stores, Inc. dba Good Time Store 70, Docket No. 2010-1201-PST-E on October 19, 2010 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Carlos Salazar, Docket No. 2010-1270-WOC-E on October 19, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Michael Rached, Docket No. 2010-1277-WOC-E on October 19, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tom N. Townsend, Docket No. 2010-1271-WOC-E on October 19, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Locos Pick & Pull LLC, Docket No. 2010-1250-WQ-E on October 19, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Richard Clark Builders, Inc., Docket No. 2010-1251-WQ-E on October 19, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Key Building Systems Incorporated, Docket No. 2010-1163-WQ-E on October 19, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Steve Wier, Inc. dba Birds Nest Aviation, Inc., Docket No. 2010-1286-WQ-E on October 19, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201006110

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 27, 2010

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 6, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 6, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Fredericksburg; DOCKET NUMBER: 2010-0471-MWD-E; TCEQ ID NUMBER: RN101917383; LOCATION: approximately one-half mile southeast of the City of Fredericksburg and immediately east of United States Highway 290, Gillespie County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010171001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010171001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009, by September 1, 2009; PENALTY: $14,987, Supplemental Environmental Projects offset amount of $14,987 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Household Hazardous Waste Collection; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Maria Murr; DOCKET NUMBER: 2009-1651-IHW-E; TCEQ ID NUMBER: RN104468798; LOCATION: 3105 North Hays Street, Fort Worth, Tarrant County; TYPE OF FACILITY: inactive plating facility; RULES VIOLATED: 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and classifications on all wastes generated at the facility; and 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial hazardous waste; PENALTY: $33,000; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Randy Hebert; DOCKET NUMBER: 2010-0945-WQ-E; TCEQ ID NUMBER: RN105830517; LOCATION: Woodridge Drive, approximately one-half mile off Highway 12, Mauriceville, Orange County; TYPE OF FACILITY: Stone Ridge construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $950; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201006094

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 26, 2010

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 6, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 6, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: 2300 Sugar Sweet Realty, LLC; DOCKET NUMBER: 2010-0548-IHW-E; TCEQ ID NUMBER: RN100215458; LOCATION: 2300 East Sugar Sweet Avenue, Weslaco, Hidalgo County; TYPE OF FACILITY: inactive window blind manufacturing facility; RULES VIOLATED: 30 TAC §335.4(1) and §335.262(c)(2), by failing to manage industrial solid waste or municipal hazardous waste in a manner to prevent the discharge or imminent threat of discharge into or adjacent to waters in the state; 30 TAC §335.262(c)(1) and 40 Code of Federal Regulations (CFR) §273.35, by failing to comply with the one-year accumulation time limitation for storage of universal wastes; and 30 TAC §§335.62, 335.504, and 335.262(d) and 40 CFR §262.11, by failing to conduct proper hazardous waste determinations and maintain them for at least three years on solid wastes stored at the facility; PENALTY: $11,550; STAFF ATTORNEY: Jeffrey J. Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Asad Rizvi; DOCKET NUMBER: 2010-0102-PST-E; TCEQ ID NUMBER: RN101664001; LOCATION: 12550 State Highway 30, College Station, Brazos County; TYPE OF FACILITY: former convenience store with three inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.49(c)(2)(C) and §334.54(c)(1), and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.49(c)(4)(C) and §334.54(c)(1) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,026; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Clayton C. Whitson dba C&N Landscaping; DOCKET NUMBER: 2010-0311-LII-E; TCEQ ID NUMBER: RN105074900; LOCATION: 12590 Farm-to-Market Road 2410, Belton, Bell County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.52(c), by failing to ensure the backflow prevention device was tested prior to being placed into service at 304 Barback Trail, Harker Heights, Texas 76548; 30 TAC §344.35(d)(2), by failing to obtain the permit required to install an irrigation system prior to installation at 304 Barback Trail, Harker Heights, Texas 76548; 30 TAC §344.62(b)(1), by failing to install emissions devices in a manner that does not exceed the manufacturer's published recommendation for head spacing at 304 Barback Trail, Harker Heights, Texas 76548; 30 TAC §344.71(b), by failing to include in all written estimates, proposals, bids and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number, and the required TCEQ statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 13087, Austin, Texas 78711-3087. The commission's web site is located at www.tceq.state.tx.us"; and 30 TAC §344.23 and §344.35(d)(12), by failing to refrain from false, misleading, or deceptive practices by an irrigator relating to installation of an irrigation system, and by failing to complete the installation, including the final walk through at 304 Bareback Trail, Harker Heights, Texas 76548; PENALTY: $1,375; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Jerry Simmons; DOCKET NUMBER: 2010-0334-MSW-E; TCEQ ID NUMBER: RN105697429; LOCATION: 13129 Highway 87 North, Orange, Orange County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); PENALTY: $1,050; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Jose Pena; DOCKET NUMBER: 2010-0788-LII-E; TCEQ ID NUMBER: RN105912588; LOCATION: 3425 Castle Rock Lane, Garland, Dallas County; TYPE OF FACILITY: landscape ir-

rigation business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration; PENALTY: $250; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Kavmel, Inc. dba Shop Smart 2; DOCKET NUMBER: 2010-0364-PST-E; TCEQ ID NUMBER: RN101554632; LOCATION: 2901 Central Drive, Bedford, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gas with three USTs; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.246(1), (5) and (7)(A), by failing to maintain Stage II records at the station and make them immediately available for inspection upon request by agency personnel; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; PENALTY: $6,964; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Pat Walker dba Walker Waterfront; DOCKET NUMBER: 2010-0901-PWS-E; TCEQ ID NUMBER: RN101277770; LOCATION: 727 Piemont Drive, Houston, Polk County; TYPE OF FACILITY: recreational vehicle park with residential homes and a public water system; RULES VIOLATED: 30 TAC §290.46(l) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.a.ii., by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.41(c)(1)(F) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 150 feet of the well; 30 TAC §290.42(j) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.a.iii., by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.42(l) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.c.iv., by failing to compile and maintain a facility operations manual for operator review and reference; 30 TAC §290.46(m)(1)(B) and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.b.iii., by failing to conduct an annual inspection of the water system's pressure tank; 30 TAC §290.45(b)(1)(E)(i), THSC, §341.0315(c), and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.d.ii., by failing to provide a well capacity requirement of at least 1.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(A)(ii), THSC, §341.0315(c), and TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.d.iii., by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(f)(2) and (3)(B)(iii), TCEQ DO Docket Number 2007-1241-PWS-E, Ordering Provision Number 2.a.v., by failing to provide disinfectant residual monitoring records to Commission personnel at the time of the investigation; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of August and September 2009, and by failing to provide public notices of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform positive sample for August and September 2009; 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of September 2009, and failing to provide public notice of the exceedence for September 2009; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five distribution coliform samples the month following a total coliform positive result for the month of March 2010; PENALTY: $3,960; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Raymond Perez; DOCKET NUMBER: 2010-0524-MSW-E; TCEQ ID NUMBER: RN105237036; LOCATION: approximately 1.8 miles north of the intersection of Iowa Road and 7 Mile Line Road, near La Joya, Hidalgo County; TYPE OF FACILITY: 4.98 acres of Lot Number 12, Block 21, Texas Gardens Subdivision; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $9,000; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Vicente Lopez and Sulema Lopez; DOCKET NUMBER: 2010-0323-MSW-E; TCEQ ID NUMBER: RN105868822; LOCATION: 1331 Quail Spring Drive, Clint, El Paso County; TYPE OF FACILITY: unauthorized scrap tire disposal; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,500; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201006095
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 26, 2010

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 319

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 319, General Regulations Incorporated into Permits, §319.302 and §319.303.

The proposed rulemaking would clarify language for safety precautions for the general public in the event of a wastewater spill and remove the current notice form from the rule replacing it with required elements of the wastewater spill notice.

The commission will hold a public hearing on this proposal in Austin on December 9, 2010, at 10:00 in Bldg B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Written comments may be submitted to Natalia Henricksen, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-024-319-OW. The comment period closes December 13, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Lynda Clayton, Water Quality Assessment Section, (512) 239-4591.

TRD-201006030
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 22, 2010

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Notice of Water Quality Applications

The following notice was issued on October 15, 2010 through October 22, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF MARLIN has applied for a renewal of TPDES Permit No. WQ0010110003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 170,000 gallons per day. The facility is located 1.7 miles from the intersection of Farm-to-Market Road 147 and Highway 6, immediately south of the dam for the New Marlin City Lake in Falls County, Texas 76661.

CITY OF ELSA has applied for a renewal of TPDES Permit No. WQ0011510002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 0.5 mile southwest of the intersection of Farm-to-Market Road 1925 and State Highway 88 in Hidalgo County, Texas 78543.

EXPLORER PIPELINE COMPANY which operates the Explorer Pipeline Greenville Station, has applied for a renewal of TPDES Permit No. WQ0002395000, which authorizes the discharge of process wastewater consisting of treated tank bottom water and storm water from a refined petroleum products pipeline tankage station on an intermittent and flow variable basis. The facility is located at 2856 County Road 2168, approximately 1.3 miles north of the intersection of Interstate Highway 30 and Farm-to-Market Road 36 and southeast of the City of Caddo Mills, Hunt County, Texas 75135.

U S STEEL TUBULAR PRODUCTS INC which operates the Star Tubular Services Division oil field equipment warehouse facility, has applied for a renewal of TPDES Permit No. WQ0004059000, which authorizes the discharge of treated domestic wastewater and wash water at a daily average flow not to exceed 6,500 gallons per day via Outfall 001. The facility site is approximately three miles northwest of the intersection of U.S. Highway 259 and State Highway 250, and approximately 2.5 miles east of the City of Lone Star, Morris County, Texas.

CARGILL INC which operates the Sweet Bran Terminal, an animal feed loading and transfer station, has applied for a renewal of TCEQ Permit No. WQ0004494000, which authorizes the disposal of wash water from animal feed production and distribution at an annual average flow not to exceed 2,500 gallons per day via irrigation of 60 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately 1/2 mile west of the intersection of U.S. Highway 87 and West Ranch Road 1727, northwest of the City of Dalhart, Dallam County, Texas 79022.

CITY OF PITTSBURG has applied for a renewal of TPDES Permit No. WQ0010250002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1.3 miles southeast of the intersection of Arch Davis Road and Lafayette Street in the southeast section of the City of Pittsburg in Camp County, Texas 75686.

THE CITY OF PORTLAND has applied for a renewal of TPDES Permit No. WQ0010478001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 1095 Moore Avenue (Farm-to-Market Road 893), 2,000 feet northwest of the intersection of Farm-to-Market Road 893 and U.S. Highway 181 in the City of Portland in San Patricio County, Texas 78374.

THE CITY OF POTTSBORO has applied for a renewal of TPDES Permit No. WQ0010591001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 219 Reeves Road at Little Mineral Creek, approximately 1.6 miles north of the intersection of Farm-to-Market Road 120 and Farm-to-Market Road 996 in Grayson County, Texas 75076.

CITY OF RHOME has applied for a major amendment to TPDES Permit No. WQ0010701001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 80,000 gallons per day to a daily average flow not to exceed 100,000 gallons per day. The facility is located on Quail Ridge Drive approximately 750 feet west and 1,600 feet north of the intersection of the west bound lanes of State Highway 114 and the Burlington Northern Railroad in Wise County, Texas 76078.

CITY OF GRUVER has applied for a renewal of TPDES Permit No. WQ0010751001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.6 mile west of State Highway 15 and approximately 0.8 mile east of State Highway 136, southeast of the City of Gruver in Hansford County, Texas 79040.

RIVER HILLS OWNERS ASSOCIATION INC has applied for a renewal of TPDES Permit No. WQ0010961001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located approximately 600 feet west northwest of the intersection of Farm-to-Market Road 691 and Farm-to-Market Road 131 in Grayson County, Texas 75020.

POLK COUNTY FRESH WATER SUPPLY DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0011298001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 260,000 gallons per day. The facility is located 800 feet east of the City of Onalaska and approximately 2,500 feet south-

east of the intersection of U.S. Highway 190 and State Highway 356 in Polk County, Texas 77360.

VILLAS ON TRAVIS CONDOMINIUM OWNERS ASSOCIATION has applied for a major amendment to TCEQ Permit No. WQ0011532001, to authorize an increase in the daily average flow from 27,000 gallons per day to 32,000 gallons per day and to increase the acreage irrigated from 3.94 acres to 4.24 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 200 feet northwest of Farm-to-Market Road 620 at a point 1.8 miles west of Mansfield Dam and adjacent to Lake Travis in Travis County, Texas

YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE GREATER HOUSTON AREA has applied for a renewal of TPDES Permit No. WQ0011644001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1,000 feet north of Farm-to-Market Road 356, 4.5 miles east of State Highway 19 and 5.0 miles southeast of the intersection of State Highway 19 and Farm-to-Market Road 230 in Trinity County, Texas 75862.

U S DEPARTMENT OF THE INTERIOR has applied for a renewal of TPDES Permit No. WQ0012865001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 3,300 feet northwest of the Chisos Mountain Lodge in the Basin in Big Bend National Park in Brewster County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 89 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012939001 to authorize the addition of an interim II phase at a daily average flow not to exceed 550,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 4055 Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas 77547.

CITY OF MIDWAY has applied for a renewal of TPDES Permit No. WQ0013378001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas 75852.

EASTWOOD HILLS MOBILE HOME PARK LIMITED PARTNERSHIP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014979001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. This facility was previously permitted under TPDES Permit No. WQ0012788001, which expired March 1, 2010. The facility is located at 11315 Hillridge Drive in Montgomery County, Texas 77385.

CITY OF ASHERTON has applied for a renewal of TPDES Permit No. WQ0013746001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located 6,000 feet northeast of U.S. Highway 83 and 4,000 feet northwest of Farm-to-Market Road 190 in Dimmit County, Texas 78827.

CROSS ROADS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013789001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located approximately 940 feet northeast of the intersection of Farm-to-Market Road 3441 and Farm-to-Market Road 59 in Henderson County, Texas 75148.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 383 has applied for a renewal of TPDES Permit No. WQ0013875002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 9060 Gleannlock Forest, approximately 2.3 miles northeast of the intersection of State Highway 249 and Spring Cypress Road, 1.8 miles west of the intersection of Stuebner-Airline Road and Spring Cypress Road in Harris County, Texas 77379.

EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND CITY OF EDINBURG has applied for a new permit, Proposed TCEQ Permit No. WQ0014398002, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 4.5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located on the Edinburg Consolidated Independent School District Brewster Elementary and Middle School grounds, approximately 1 mile west of the intersection of Farm-to-Market Road 1017 and U.S. Highway 281 in Hidalgo County, Texas 78541.

PRAIRILAND INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014473001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located 1,650 feet west of Farm-to-Market Road 196, approximately 3,000 feet southwest of the intersection of U.S. Highway 271 and Farm-to-Market Road 196 in Lamar County, Texas 75468.

RANKIN PARK MAINTENANCE AND UTILITY CO INC has applied for a renewal of TPDES Permit No. WQ0014621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 6,500 feet east of the intersection of Interstate Highway 45 and Rankin Road in the City of Houston in Harris County, Texas 77268.

TURNER CREST VILLAGE WASTE WATER COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0014831001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 3.77 miles northeast of the intersection of Highway 80 and Highway 142 and approximately 3,400 feet southeast of Highway 142 in Caldwell County, Texas 78656.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201006109
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 27, 2010

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Public Notice - Shutdown/Default Order

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC),

§26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 6, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 6, 2010.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: PCR Construction/Development, Inc. dba J & J Business Solutions, L.L.C. dba Gas & Go; DOCKET NUMBER: 2010-0288-PST-E; TCEQ ID NUMBER: RN105015499; LOCATION: 5202 North United States Highway 281, Edinburg, Hidalgo County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to provide an amended UST registration to the TCEQ for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition, and failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the facility; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST system at the facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to test the line leak detectors at the facility at least once per year for performance and operational reliability, by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement at the facility for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label or marking with the UST identification number listed on the UST registration and self-certification form is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube of the UST system at the facility; PENALTY: $9,066; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201006096
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 26, 2010

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Texas Superfund Registry

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published on January 16, 1987, in the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) and listed in accordance with §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been delisted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with THSC, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of Hazard Ranking System (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.

2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

3. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: specialty chemical and toll manufacturing facility.

4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

6. Voda Petroleum Inc. Located approximately 1.25 mile west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-north-

east of Clarksville City, Gregg County: former waste oil recycling facility.

7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

10. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

11. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

12. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

13. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near U.S. Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

14. American Zinc. Located approximately 3.5 miles north of Dumas, on U.S. 287 and 5 miles east on Farm Road 119: former zinc smelter.

15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

19. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

20. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

21. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

22. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

23. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

24. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

25. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

26. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with THSC, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

2. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431 in the community of Kingsland, Llano County: two groundwater plumes.

3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.

4. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County, Texas: former fuel storage and fuel blending/distillation facility.

5. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

6. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

7. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of U.S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

8. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

9. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

10. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

11. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

12. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

13. Avinger Development Company (ADCO). Located on the south side of Texas State Highway 155, approximately 1/4 mile east of the intersection with Texas State Highway 49, Avinger, Cass County: wood treatment.

14. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

15. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

16. Moss Lake Road Groundwater Site. Located approximately 1/4 mile north of the intersection of North Moss Lake Road and Interstate 20, approximately 4 miles east of Big Spring, Howard County: groundwater plume of an unknown source.

17. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Robstown, Nueces County: storage and disposal of hazardous substances.

18. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

19. San Angelo Electrical Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer service, building and repair facility.

20. Tucker Oil Refinery/Clinton Manges Oil Refinery Site. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

21. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

22. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

23. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

24. Woodward Industries, Inc., Nacogdoches County. Located on County 816, about 6 miles north of the city of Nacogdoches in Nacogdoches County: wood treating.

Since the last *Texas Register* publication on September 18, 2009 (34 TexReg 6464), the TCEQ has determined that two sites, Angus Road Groundwater Site, located in Ector County, and the Moss Lake Road Groundwater Site, located in Howard County, may pose an imminent and substantial endangerment to public health and safety or the environment, and pursuant to THSC, §361.184(a) have been added to the list of sites proposed to the state Superfund registry. No additional sites were proposed to the state Superfund registry.

To date, 47 sites have been deleted from the state Superfund registry in accordance with THSC, §361.189 (see also 30 TAC §335.344): Aluminum Finishing Company, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Force Road Oil, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corp., Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, telephone (800) 633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

TRD-201006084
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 26, 2010

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Texas Facilities Commission

Request for Proposals #303-1-20256

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-1-20256. TFC seeks a three or five lease of approximately 7,128 square feet of office space in Austin, Texas.

The deadline for questions is November 15, 2010, and the deadline for proposals is November 23, 2010, at 3:00 p.m. The target award date is December 15, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=91359.*

TRD-201006098
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 26, 2010

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 28 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act. The proposed effective date of this amendment is March 1, 2012.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) was signed into federal law on February 4, 2009. CHIPRA requires states to provide a dental benefit package that prevents disease, promotes oral health, restores oral structures to health and function, and treats emergency conditions. Prior to CHIPRA's enactment, it was optional for states to cover dental benefits in CHIP.

On October 7, 2009, the Centers for Medicare and Medicaid Services (CMS) provided federal guidance, which interpreted CHIPRA to require CHIP coverage of benefits in each of the following categories of dental care: diagnostic, preventive, restorative, endodontic, periodontal, prosthodontic, oral and maxillofacial surgery, orthodontics, and emergency dental services. HHSC proposes to amend the CHIP State Plan to assure that Texas CHIP dental coverage includes den-

tal benefits from each of the required categories of care. In addition, HHSC proposes to eliminate the current dental tiers, remove the coverage limits that are based on preventive dental services and therapeutic dental services, and provide all CHIP members coverage up to $564 per 12-month enrollment period. CHIP members may use the $564 toward any covered dental service(s).

In order to offset costs of covering additional dental benefits, HHSC proposes to require CHIP members to pay an office visit co-payment for each non-preventive dental visit.

The proposed amendment is estimated to result in a cost of $851,790 for the second half of state fiscal year (SFY) 2012 (March 1, 2012 through August 31, 2012), consisting of $596,700 in federal funds and $255,090 to state general revenue. For SFY 2013, the estimated annual cost is $1,936,461, consisting of $1,356,539 in federal funds and $579,921 in state general revenue.

To obtain copies of the proposed amendments, interested parties may contact Valerie Eubert-Baller by mail at P.O. Box 85200, MC: H-310, Austin, Texas 78708; by telephone at (512) 491-1164; by facsimile at (512) 491-1953; or by e-mail at valerie.eubert-baller@hhsc.state.tx.us.

TRD-201006026
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 22, 2010

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a waiver amendment for the State of Texas Access Reform (STAR) Program, which is a Managed Care waiver program under the authority of §1915(b) of the Social Security Act. The STAR Program is currently approved for the two-year period beginning July 1, 2010, and ending June 30, 2012. It is expected that CMS will approve a previous amendment submitted in August 2010, which added new benefits for the proposed substance use disorder treatment services including services provided in residential settings. Upon approval of the previous amendment, this amendment will be submitted to CMS.

STAR services include all of the traditional Medicaid benefits plus unlimited prescriptions for adults, no limit on necessary hospital days, and health education classes. STAR provides clients with access to a primary care provider that knows their health-care needs and can coordinate their care through a "medical home." Clients who join one of the Health Management Organizations may also have access to value-added services and additional services. Value-added services are additional health-care services, benefits, or positive incentives that a Health Management Organization voluntarily elects to provide to its clients at no additional cost to the state. Health Management Organizations offer value-added services to attract clients to enroll with them. Additional services may be offered to clients on a case-by-case basis at the discretion of the Health Management Organization. The Health Management Organization may provide these services based on medical necessity, cost-effectiveness, the needs of the client, and the potential for improved health status of the client. Value-added services and additional services can vary from one Health Management Organization to another. The STAR program exists in Bexar, Dallas, El Paso, Harris, Harris Expansion, Lubbock, Nueces, Tarrant and Travis Service Areas. These nine service areas consist of 52 counties.

This amendment will change the STAR waiver because of the expansion of the STAR+PLUS Program into the Dallas and Tarrant Service Areas on February 1, 2011. SSI/SSI-related adults with or without Medicare in the Dallas and Tarrant Service Areas will no longer have the choice to voluntarily enroll in the STAR program. Instead these adults will be automatically enrolled into the STAR+PLUS Program. SSI/SSI-related children with or without Medicare may voluntarily enroll in the STAR+PLUS program.

HHSC is requesting that this waiver amendment be approved for the period beginning February 1, 2011, and ending June 30, 2012. This waiver amendment is expected to result in cost neutrality for the State for the remaining two-year period covering 2011 through 2012.

To obtain copies of the proposed waiver application, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-620, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1953, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-201006079
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 25, 2010

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Request for an Amendment to the Two 1915(c) STAR+PLUS Waivers

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the two 1915(c) STAR+PLUS Waivers, which are Medicaid home and community-based services waiver programs under the authority of Title XIX §1915(c) of the Social Security Act. The STAR+PLUS 1915(c) waivers are expected to be approved for the five-year period beginning February 1, 2011, and ending January 31, 2016. The proposed effective date for the amendments is February 1, 2011.

STAR+PLUS requires three Medicaid waivers - one 1915(b) waiver and two 1915(c) waivers. The 1915(b) waiver requires participation in managed care for adults who are aged, blind or disabled, who live in a STAR+PLUS service area and are recipients of Medicaid. The purpose of the waiver is to integrate delivery of acute health care and long-term care services and supports through a managed care system for individuals who reside in the following counties:

* Bexar Service Area: Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson counties

* Harris/Harris Expansion Service Area: Brazoria, Fort Bend, Galveston, Harris, Montgomery, and Waller counties

* Nueces Service Area: Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio, and Victoria counties

* Travis Service Area: Bastrop, Burnet, Caldwell, Hays, Lee, Travis and Williamson counties

The STAR+PLUS 1915(c) waivers allow persons age 65 and older and persons over the age of 21 with a disability, who are eligible for nursing facility level of care, to receive services in the community rather than in an institutional facility. The STAR+PLUS 1915(c) waivers provide personal assistance, adaptive aids and medical supplies, minor home modifications, nursing services, occupational therapy, physical therapy, speech therapy, respite, transition assistance, financial management, support consultation, adult foster care, assisted living, dental, emergency response and home delivered meals to allow individuals to remain in the community.

These amendments will expand the STAR+PLUS program waivers to include the counties in the Dallas/Fort Worth service areas. The Dallas Service Area includes seven counties: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall. The Tarrant Service Area includes six counties: Denton, Hood, Johnson, Parker, Tarrant, and Wise.

HHSC is requesting that the waiver amendments be approved for the period beginning February 1, 2011, through January 31, 2016. These amendments maintain cost effectiveness for waiver years 2011 through 2016.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-201006080
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 25, 2010

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Department of State Health Services

Correction of Error

The Department of State Health Services adopted amendments to 25 TAC §§146.1 - 146.4 and 146.6 - 146.10, new §§146.5, 146.11 and 146.12, and the repeal of §146.5, concerning the regulation of training and certification of promotores or community health workers. The rule adoption was published in the October 15, 2010, issue of the *Texas Register* (35 TexReg 9287).

In new §146.12(e)(2), on page 9295, second column, last paragraph, the telephone extension number "3500" is incorrect. The correct extension number is "2208."

Section 146.12(e)(2) should read as follows:

"(2) A person wishing to complain about an offense, prohibited action, or alleged violation against an instructor, promotor(a) or community health worker or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The department's mailing address is Office of Title V and Family Health, Promotor(a)/Community Health Worker Training and Certification Program, Mail Code 1922, P.O. Box 149347, Austin, Texas 78714-9347, physical address is 1100 West 49th Street, Austin, Texas 78756-3183, and telephone (512) 458-7111, extension 2208."

TRD-201006067

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Texas Department of Insurance

Company Licensing

Application to change the name of KEMPER INVESTORS LIFE INSURANCE COMPANY to ZURICH AMERICAN LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Schaumburg, Illinois.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201006108
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 27, 2010

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Humana Health Plan of Texas, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Humana Health Plan of Texas, Inc. to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-201006023
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 21, 2010

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Companion Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Companion Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-201006024
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 21, 2010

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Time Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Time Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-201006044
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 22, 2010

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

John Alden Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of John Alden Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-201006045
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 22, 2010

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Third Party Administrator Applications

The following third party administrator application has been filed with the Texas Department of Insurance and is under consideration.

Application of PHYSICIAN PRIMECARE MANAGEMENT, LTD. (DOING BUSINESS AS HEALTHTEXAS MANAGEMENT CO.), a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201006106
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 27, 2010

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Texas Lottery Commission

Instant Game Number 1302 "Magnificent 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1302 is "MAGNIFICENT 7'S". The play style is "key number match with auto win and doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1302 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 1302.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL, $7.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 or $70,000. The possible blue play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40 and 7 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1302 - 1.2D

PLAY SYMBOL	CAPTION
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
8 (black)	EGT
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
18 (black)	ETN
19 (black)	NTN
20 (black)	TWY
21 (black)	TWON
22 (black)	TWTO
23 (black)	TWTH
24 (black)	TWFR
25 (black)	TWFV
26 (black)	TWSX
28 (black)	TWET
29 (black)	TWNI
30 (black)	TRTY
31 (black)	TRON
32 (black)	TRTO
33 (black)	TRTH
34 (black)	TRFR
35 (black)	TRFV
36 (black)	TRSX
38 (black)	TRET
39 (black)	TRNI
40 (black)	FRTY
7 SYMBOL (black)	WIN
$7.00 (black)	SEVEN$
$10.00 (black)	TEN$
$15.00 (black)	FIFTN
$20.00 (black)	TWENTY
$40.00 (black)	FORTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$500 (black)	FIV HUND
$2,000 (black)	TWO THOU

$70,000 (black)	70 THOU
1 (blue)	ONE
2 (blue)	TWO
3 (blue)	THR
4 (blue)	FOR
5 (blue)	FIV
6 (blue)	SIX
8 (blue)	EGT
9 (blue)	NIN
10 (blue)	TEN
11 (blue)	ELV
12 (blue)	TLV
13 (blue)	TRN
14 (blue)	FTN
15 (blue)	FFN
16 (blue)	SXN
18 (blue)	ETN
19 (blue)	NTN
20 (blue)	TWY
21 (blue)	TWON
22 (blue)	TWTO
23 (blue)	TWTH
24 (blue)	TWFR
25 (blue)	TWFV
26 (blue)	TWSX
28 (blue)	TWET
29 (blue)	TWNI
30 (blue)	TRTY
31 (blue)	TRON
32 (blue)	TRTO
33 (blue)	TRTH
34 (blue)	TRFR
35 (blue)	TRFV
36 (blue)	TRSX
38 (blue)	TRET
39 (blue)	TRNI
40 (blue)	FRTY
7 SYMBOL (blue)	DOUBLER

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $7.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $70,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1302), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1302-0000001-001.

K. Pack - A pack of "MAGNIFICENT 7'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAGNIFICENT 7'S" Instant Game No. 1302 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAGNIFICENT 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "BLACK 7" play symbol, the player wins the PRIZE shown for that symbol. If a player reveals a "BLUE 7" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The "BLUE 7" (doubler) play symbol will only appear as dictated by the prize structure.

C. The "BLACK 7" (auto win) play symbol will never appear more than once on winning tickets.

D. There will be a minimum of 4 and a maximum of 12 blue play symbols on every ticket unless otherwise restricted by the prize structure.

E. No more than four (4) duplicate non-winning prize symbols will appear on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket regardless of color.

G. No duplicate WINNING NUMBERS play symbols on a ticket.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. YOUR NUMBERS play symbols matching WINNING NUMBERS play symbols will be a win, regardless of color.

J. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 20 and $20).

K. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAGNIFICENT 7'S" Instant Game prize of $7.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAGNIFICENT 7'S" Instant Game prize of $2,000 or $70,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAGNIFICENT 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MAGNIFICENT 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MAGNIFICENT 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1302. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1302 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	403,200	12.50
$10	470,400	10.71
$15	201,600	25.00
$20	235,200	21.43
$50	67,200	75.00
$100	35,700	141.18
$500	2,562	1,967.21
$2,000	81	62,222.22
$70,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1302 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1302, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201006025
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 21, 2010

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Texas Board of Pardons and Paroles

Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Board of Pardons and Paroles announces the following notice of contract award for Consulting Services to provide an analysis of its current Parole Guidelines Risk Item Factors Scale Instrument. The Notice of Request for Proposals, 696-BP-10-P003, was published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5972).

The Contract was awarded to: MGT of America, Inc., 502 East 11th Street, Suite 300, Austin, Texas 78701.

The total funding for Phase I of this Contract shall not exceed $83,108. The Contract commencement date is November 1, 2010. The Contract completion date for Phase I shall be within six months after award. If Phase II and/or Phase III are awarded, each phase shall be completed within six months after receipt of Contract modification.

The final report, if Phase III is exercised, shall be submitted within 18 months after the award of the Contract.

TRD-201006111
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: October 27, 2010

♦ ♦ ♦

State Preservation Board

Notice of Contract Award

State Preservation Board (SPB) announces the following contract award:

Consulting Services Contract Notification was published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7953).

The Contractor will provide front-end evaluation exhibit planning services to the Bob Bullock Texas State History Museum ("Museum"), a division of the SPB, for the exhibit concept development phase of the La Belle ship installation project. The Contractor will conduct a front-end evaluation with visitors to the Museum and will support Museum staff in a front-end evaluation with professionals in the museum field. The findings from these front-end evaluation studies will support the Museum's ongoing La Belle project planning efforts and the National Endowment for the Humanities implementation grant proposal to be submitted in January 2011.

The contract was awarded to Institute for Learning Innovation, 3168 Braverton Street, Suite 280, Edgewater, MD 21037. The amount of the contract is $26,000. The term of the contract is October 22, 2010 - December 31, 2010, with deliverables presented to the agency mid December 2010.

TRD-201006074
Linda Gaby, CTPM
Director of Administration
State Preservation Board
Filed: October 25, 2010

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 20, 2010, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Cable One, Inc. to Amend its State-Issued Certificate of Franchise Authority, Project Number 38831 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Pampa, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38831.

TRD-201006075
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2010

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 25, 2010, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 38843 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of West Lake Hills and the City of Sunset Valley, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38843.

TRD-201006103
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 26, 2010

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Notice of Application for an Amendment to Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 20, 2010, for a certificate of convenience and necessity for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Childress, Cottle, Hardeman, Foard, Knox, Haskell, Jones, and Shackelford Counties, Texas.

Docket Style and Number: Application of Electric Transmission Texas, LLC (ETT) to Amend its Certificate of Convenience and Necessity for the Tesla to Edith Clarke to Clear Crossing to West Shackelford 345-kV Transmission Line in Childress, Cottle, Hardeman, Foard, Knox, Haskell, Jones, and Shackelford Counties. SOAH Docket Number 473-11-0945; PUC Docket Number 38743.

The Application: The proposed project consists of constructing three separate segments of a new double-circuit 345-kV transmission line: (1) Tesla to Edith Clarke, (2) Edith Clarke to Clear Crossing, and (3) Clear Crossing to West Shackelford. The proposed project is described in the ERCOT CREZ Transmission Optimization Study as the "Tesla to Central C (Combined Application) (Tesla-Edith Clarke-Clear Crossing-West Shackelford 345-kV)." The preferred route for the new 345-kV double-circuit line is approximately 154 miles in length and will be constructed using steel monopoles. The estimated cost of the combined project is $257,256,000.

(1) The proposed Tesla to Edith Clarke 43.42 mile line will extend from ETT's proposed Tesla Switching Station to the proposed ETT Edith Clarke Switching Station. The estimated date to energize facilities for this transmission line is March 2013. The Tesla to Edith Clarke segment includes a total of 12 alternative routes in Childress, Cottle, Foard, and Hardeman Counties. ETT has identified TE-10 as its preferred route for this segment which has an estimated total cost of $74,997,000.

(2) The proposed Edith Clarke to Clear Crossing 78.37 mile line will extend from the Edith Clarke Switching Station to the proposed ETT Clear Crossing Switching Station. The estimated date to energize facilities for this transmission line is September 2013. The Edith Clarke to Clear Crossing segment includes a total of 25 alternative routes in Foard, Knox, and Haskell Counties. ETT has identified EC-12A as its preferred route which has an estimated cost of $126,107,000.

(3) The proposed Clear Crossing to West Shackelford 32.29 mile line will extend from ETT's Clear Crossing Switching Station to Lone Star's proposed West Shackelford Switching Station. The estimated date to energize facilities for this transmission line is September 2013. The Clear Crossing to West Shackelford segment includes a total of 18 alternative routes in Haskell, Jones, and Shackelford Counties. ETT has identified CW-5 as its preferred route which has an estimated cost of $56,152,000. Any route presented in the application could, however, be approved by the commission.

Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Tesla to Edith Clarke to Clear Crossing to West Shackelford transmission line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, ETT was ordered to complete the project identified as the Tesla to Edith Clarke to Clear Crossing to West Shackelford Project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 19, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0945 and PUC Docket Number 38743.

TRD-201006101
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 26, 2010

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Notice of Application for Approval of Post-Go-Live Utilization of the Texas Nodal Market Implementation Surcharge

Notice is hereby given to the public of the October 25, 2010 filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas for Approval of Post-Go-Live Utilization of the Texas Nodal Market Implementation Surcharge.

Docket Style and Number: Application of the Electric Reliability Council of Texas for Approval of Post-Go-Live Utilization of the Texas Nodal Market Implementation Surcharge, Docket Number 38840.

The Application: The Electric Reliability Council of Texas, Inc. (ERCOT) seeks approval of the use of revenues generated by the previously approved Nodal Surcharge to pay for expenses associated with the transition to the nodal market that ERCOT will incur after the planned December 1, 2010 nodal market go-live date (Post-Go-Live Charges). Use of Nodal Surcharge revenues has, to date, been limited to funding expenses leading up to the go-live date for the nodal market. ERCOT notes that while the Post-Go-Live Charges identified in the application are all directly related to the nodal market transition, the Commission's prior orders approving the Nodal Surcharge did not explicitly address using any of the surcharge revenues to fund expenses incurred after December 2010.

ERCOT maintains that the proposal will enable it to effectively manage the transition to the nodal market in 2011 without increases in either the Nodal Surcharge or the ERCOT System Administration Fee. ERCOT requested expeditious consideration of the request so that an order may be approved as close to December 1, 2010 as possible. On October 19, 2010, the ERCOT Board of Directors approved two resolutions authorizing use of a combined total of $25.2 million of Board Discretionary Funds for the Post-Go-Live Charges.

The deadline for intervention in this proceeding is November 24, 2010.

Persons who wish to intervene in or comment in this proceeding should notify the Public Utility Commission of Texas by the intervention deadline. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. A request to intervene shall include a statement of position containing a concise statement of the requestor's position on the application, a concise statement of each question of fact, law, or policy that the requestor considers at issue and a concise statement of the requestor's position on each issue identified.

ERCOT will post notice and a copy of its application on its website at http://www.ercot.com/about/governance/legal_notices.html. Interested parties may also access ERCOT's application through the Public Utility Commission's web site at http://www.puc.state.tx.us under Docket Number 38840, *Application of the Electric Reliability Council of Texas for Approval of Post-Go-Live Utilization of the Texas Nodal Market Implementation Surcharge.*

TRD-201006104
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 26, 2010

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 19, 2010, for an amendment to certificated service area boundaries within Webb County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. and AEP Texas Central Company to amend a Certificate of Convenience and Necessity for Service Area Boundaries within Webb County. Docket Number 38828.

The Application: The proposed boundary change is for release of territory from AEP Texas Central Company to Medina Electric Cooperative, Inc. (MEC) so that MEC can accommodate a customer's request to provide service in a timely, cost-effective manner. Approximately 70% of the customer's property is presently situated within MEC's territory and MEC provides electric service. No other customers are affected by the boundary change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 12, 2010 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38828.

TRD-201006076
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2010

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Notice of Application for Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 21, 2010, for a certificate of operating authority (COA), pursuant to §§54.101 - 54.105 of the Public Utility Regulatory Act.

Docket Title and Number: Application of CNS Networking Solutions, LLC for a Certificate of Operating Authority, Docket Number 38835.

Applicant intends to provide data-only telecommunications services.

Applicant's requested COA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 12, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38835.

TRD-201006077
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2010

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 20, 2010, to amend a certificate of convenience and necessity for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Briscoe, Castro, Deaf Smith, Randall and Swisher Counties, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend its Certificate of Convenience and Necessity for the Hereford to Nazareth to Silverton 345-kV CREZ Transmission Line in Briscoe, Castro, Deaf Smith, Randall and Swisher Counties. SOAH Docket Number 473-11-0946; PUC Docket Number 38750.

The Application: The proposed project consists of constructing two separate segments of a new single-circuit 345-kV transmission line, constructed on double-circuit capable steel lattice towers: (1) Hereford to Nazareth, (2) Nazareth to Silverton, and (3) associated collection station known as the Nazareth Station. The proposed project is described in the ERCOT CREZ Transmission Optimization (ERCOT CTO) Study as the "Panhandle AB to Panhandle AC (Combined Application)" (Hereford-Nazareth-Silverton 345-kV). The applicant's estimated cost of the project is $120,540,000.

Hereford to Nazareth (HN). This segment of the proposed project is described in the ERCOT CTO Study as "Panhandle AB to Nazareth single-circuit 345-kV line." The proposed 23.95 mile line will extend from Sharyland's proposed Hereford Station (Pandhandle AB) to Sharyland's proposed Nazareth Station. The estimated date to energize facilities for this transmission line is May 21, 2013. The Hereford to Nazareth segment includes a total of nine alternative routes in Deaf Smith and Castro Counties. Sharyland has identified HN-2 as its preferred route. Any route presented in the application could, however, be approved by the commission. The study area used to develop HN routes covers parts of Castro, Deaf Smith, Randall and Swisher Counties.

Nazareth to Silverton (NS). This segment of the proposed project is described in the ERCOT CTO Study as "Nazareth to Panhandle AC single-circuit 345-kV line." The proposed 43.24 mile line will extend from Sharyland's proposed Nazareth Station to Sharyland's proposed Silverton Station (Panhandle AC). The estimated date to energize facilities for this transmission line is April 4, 2013. The Nazareth to Silverton segment includes a total of 11 alternative routes in Castro, Briscoe and Swisher Counties. Sharyland has identified NS-4 as its preferred route. Any route presented in the application could, however, be approved by the commission.

The combined Project will connect with Sharyland's Silverton Station proposed in Docket Number 38560 and Sharyland's Hereford Station proposed in Docket Number 38290.

Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Hereford to Nazareth to Silverton 345-kV transmission-line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, Sharyland was selected as the responsible entity and was ordered to construct the subject transmission-line project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 19, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0946 and PUC Docket Number 38750.

TRD-201006102
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 26, 2010

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Office of the Secretary of State

Notice of Correction to Texas Register Publication Schedule

In accordance with 1 TAC §91.6(c), concerning Publication Deadlines, the Texas Register gives notice of a change to the 2010 publication schedule. The deadline for submitting both rulemaking and nonrulemaking documents for publication in the December 31, 2010, issue of the *Texas Register* is now 12:00 noon on December 20, 2010.

TRD-201006083

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Lockhart, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Lockhart Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Lockhart. TxDOT CSJ No.: 1114LOCKT.

Scope of Work:

Rehab and mark runway 18-36 and taxiways; rehab hanger access taxiway, apron and FBO apron; update signage at the Lockhart Municipal Airport.

The HUB goal for the current project is 6%. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Terminal Area Plan
2. Airfield lighting projects

The City of Lockhart reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Lockhart Municipal Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **December 7, 2010, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow, Grant Manager.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201006090
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 26, 2010

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Aviation Division - Request for Proposal for Professional Engineering Services

The City of Wharton, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Wharton Regional Airport during the course of the next five years through multiple grants.

Current Project: City of Wharton. TxDOT CSJ No.: 1013WHRTN. Widen north entrance TW to terminal apron, upgrade/replace nine (9) TW culverts and construct new south entrance TW to terminal apron.

The DBE goal for the current project is 5%. TxDOT Project Manager is Russell Deason.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate RW 14-32, Taxiway, and parking area (sponsor requested)
2. Construct apron around new hangar
3. Expand and rehabilitate apron
4. Reconstruct and realign entrance road
5. Expand T-hangar auto parking
6. Regrade ditches
7. Replace PLASI w/ PAPI-4 RW 32
8. Construct hangar access TW
9. Rehabilitate hangar access and parallel and cross TWs
10. Install TW reflectors

The City of Wharton reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Wharton Regional Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 7, 2010, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Russell Deason, Project Manager.

TRD-201006092
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 26, 2010

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201006091
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 26, 2010

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Sul Ross State University

Request for Proposals

RFP #11-001 Consulting Services

Pursuant to Texas Government Code, Chapter 2254, Sul Ross State University, a member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the development and implementation of a complete marketing, branding, and communications campaign. The campaign designed should have special and specific emphasis on the growing Hispanic market in Texas and neighboring states.

Project Summary: The campaign development should include a detailed review of the University's mission statement and strategic plan and related goals and objectives. The marketing strategic plan should clearly identify the enrollment and branding objectives appropriate for Sul Ross State University. A number of large marketing ideas and/or strategies will be developed in the campaign as the means to achieving these objectives. The strategies should include creative messaging, media to be utilized, website utilization, recruitment tools, promotional materials, and direct marketing. This project should result in top quality creative materials sufficient for a three-year period and should include: video(s), photo libraries of students, faculty, parents, staff, and community leaders, TV spots, website design, print ads of varying sizes, billboard designs, high school posters, and a recruitment toolbox. The successful vendor will also assist Sul Ross State University with fund raising needed to complete the implementation of the resulting project strategies.

In accordance with the provisions of Government Code §2254.028(c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:00 p.m., Monday, December 6, 2010. A copy of the request for proposal packet is available upon request from Noe Hernandez, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar projects and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-201006061
Ricardo Maestas
Executive Director
Sul Ross State University
Filed: October 25, 2010

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*